

SENATE, No. 4138

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED NOVEMBER 12, 2021

Sponsored by:

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

Concerns eligibility for unemployment benefits.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning unemployment compensation for individuals
2 who leave work for offers of other employment which are
3 rescinded, and amending R.S.43:21-5.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. R.S.43:21-5 is amended to read as follows:

9 43:21-5. An individual shall be disqualified for benefits:

10 (a) For the week in which the individual has left work voluntarily
11 without good cause attributable to such work, and for each week
12 thereafter until the individual becomes reemployed and works eight
13 weeks in employment, which may include employment for the
14 federal government, and has earned in employment at least **【ten】 10**
15 times the individual's weekly benefit rate, as determined in each case.
16 This subsection shall apply to any individual seeking unemployment
17 benefits on the basis of employment in the production and harvesting
18 of agricultural crops, including any individual who was employed in
19 the production and harvesting of agricultural crops on a contract basis
20 and who has refused an offer of continuing work with that employer
21 following the completion of the minimum period of work required to
22 fulfill the contract. This subsection shall not apply to an individual
23 who voluntarily leaves work with one employer to accept from
24 another employer employment which commences not more than
25 **【seven】 10** days after the individual leaves employment with the first
26 employer, or an individual who leaves work with the first employer
27 upon receipt of an offer of employment from another employer to
28 commence not more than 10 days after the individual leaves work,
29 but the offer is rescinded through no fault of the individual, if the
30 employment with the second employer has weekly hours or pay not
31 less than the hours or pay of the employment of the first employer,
32 except that if the individual gives notice to the first employer that the
33 individual will leave employment on a specified date and the first
34 employer terminates the individual before that date, the **【seven-day】**
35 10-day period will commence from the specified date.

36 (b) For the week in which the individual has been suspended or
37 discharged for misconduct connected with the work, and for the five
38 weeks which immediately follow that week, as determined in each
39 case.

40 "Misconduct" means conduct which is improper, intentional,
41 connected with the individual's work, within the individual's control,
42 not a good faith error of judgment or discretion, and is either a
43 deliberate refusal, without good cause, to comply with the employer's
44 lawful and reasonable rules made known to the employee or a
45 deliberate disregard of standards of behavior the employer has a

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 reasonable right to expect, including reasonable safety standards and
2 reasonable standards for a workplace free of drug and substance
3 abuse.

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

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

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

22 To sustain disqualification from benefits because of misconduct
23 under this subsection (b), the burden of proof is upon the employer,
24 who shall, prior to a determination by the department of misconduct,
25 provide written documentation demonstrating that the employee's
26 actions constitute misconduct or gross misconduct.

27 Nothing within this subsection (b) shall be construed to interfere
28 with the exercise of rights protected under the "National Labor
29 Relations Act," (29 U.S.C. s.151 et seq.) or the "New Jersey
30 Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et
31 seq.).

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

40 (1) In determining whether or not any work is suitable for an
41 individual, consideration shall be given to the degree of risk involved
42 to health, safety, and morals, the individual's physical fitness and
43 prior training, experience and prior earnings, the individual's length
44 of unemployment and prospects for securing local work in the
45 individual's customary occupation, and the distance of the available
46 work from the individual's residence. In the case of work in the
47 production and harvesting of agricultural crops, the work shall be
48 deemed to be suitable without regard to the distance of the available

1 work from the individual's residence if all costs of transportation are
2 provided to the individual and the terms and conditions of hire are as
3 favorable or more favorable to the individual as the terms and
4 conditions of the individual's base year employment.

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

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

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

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

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

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

43 (3) For any claim for a period of unemployment commencing on
44 or after July 1, 2018, no disqualification under this subsection (d)
45 shall apply if the labor dispute is caused by the failure or refusal of
46 the employer to comply with an agreement or contract between the
47 employer and the claimant, including a collective bargaining

1 agreement with a union representing the claimant, or a State or
2 federal law pertaining to hours, wages, or other conditions of work.

3 (4) For any claim for a period of unemployment commencing on
4 or after July 1, 2018, if the unemployment is caused by a labor
5 dispute, including a strike or other concerted activities of employees
6 at the claimant's workplace, whether or not authorized or sanctioned
7 by a union representing the claimant, but not including a dispute
8 subject to the provisions of paragraph (2) or (3) of this subsection
9 (d), the claimant shall not be provided benefits for a period of the
10 first 30 days following the commencement of the unemployment
11 caused by the labor dispute, except that the period without benefits
12 shall not apply if the employer hires a permanent replacement worker
13 for the claimant's position. A replacement worker shall be presumed
14 to be permanent unless the employer certifies in writing that the
15 claimant will be permitted to return to his or her prior position upon
16 conclusion of the dispute. If the employer does not permit the return,
17 the claimant shall be entitled to recover any benefits lost as a result
18 of the 30-day waiting period before receiving benefits, and the
19 department may impose a penalty upon the employer of up to \$750
20 per employee per week of benefits lost. The penalty collected shall
21 be paid into the unemployment compensation auxiliary fund
22 established pursuant to subsection (g) of R.S.43:21-14.

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

25 (f) For any week with respect to which or a part of which the
26 individual has received or is seeking unemployment benefits under
27 an unemployment compensation law of any other state or of the
28 United States; provided that if the appropriate agency of the other
29 state or of the United States finally determines that the individual is
30 not entitled to unemployment benefits, this disqualification shall not
31 apply.

32 (g) (1) For a period of one year from the date of the discovery by
33 the division of the illegal receipt or attempted receipt of benefits
34 contrary to the provisions of this chapter, as the result of any false or
35 fraudulent representation; provided that any disqualification may be
36 appealed in the same manner as any other disqualification imposed
37 hereunder; and provided further that a conviction in the courts of this
38 State arising out of the illegal receipt or attempted receipt of these
39 benefits in any proceeding instituted against the individual under the
40 provisions of this chapter or any other law of this State shall be
41 conclusive upon the appeals tribunal and the board of review.

42 (2) A disqualification under this subsection shall not preclude the
43 prosecution of any civil, criminal or administrative action or
44 proceeding to enforce other provisions of this chapter for the
45 assessment and collection of penalties or the refund of any amounts
46 collected as benefits under the provisions of R.S.43:21-16, or to
47 enforce any other law, where an individual obtains or attempts to
48 obtain by theft or robbery or false statements or representations any

1 money from any fund created or established under this chapter or any
2 negotiable or nonnegotiable instrument for the payment of money
3 from these funds, or to recover money erroneously or illegally
4 obtained by an individual from any fund created or established under
5 this chapter.

6 (h) (1) Notwithstanding any other provisions of this chapter
7 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be denied
8 benefits for any week because the individual is in training approved
9 under section 236(a)(1) of the "Trade Act of 1974," Pub.L.93-618 (19
10 U.S.C. s.2296 (a)(1)) nor shall the individual be denied benefits by
11 reason of leaving work to enter this training, provided the work left
12 is not suitable employment, or because of the application to any week
13 in training of provisions in this chapter (R.S.43:21-1 et seq.), or any
14 applicable federal unemployment compensation law, relating to
15 availability for work, active search for work, or refusal to accept
16 work.

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

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

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

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

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

1 payment of benefits to an individual who left work due to
2 circumstances resulting from the individual being a victim of
3 domestic violence.

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

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

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

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

13 (4) Medical documentation of the domestic violence;

14 (5) Certification from a certified Domestic Violence Specialist or
15 the director of a designated domestic violence agency that the
16 individual is a victim of domestic violence; or

17 (6) Other documentation or certification of the domestic violence
18 provided by a social worker, member of the clergy, shelter worker or
19 other professional who has assisted the individual in dealing with the
20 domestic violence.

21 For the purposes of this subsection (j):

22 "Certified Domestic Violence Specialist" means a person who has
23 fulfilled the requirements of certification as a Domestic Violence
24 Specialist established by the New Jersey Association of Domestic
25 Violence Professionals; and "designated domestic violence agency"
26 means a county-wide organization with a primary purpose to provide
27 services to victims of domestic violence, and which provides services
28 that conform to the core domestic violence services profile as defined
29 by the Division of Youth and Family Services in the Department of
30 Children and Families and is under contract with the division for the
31 express purpose of providing such services.

32 (k) Notwithstanding any other provisions of this chapter
33 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be denied
34 benefits for any week in which the individual left work voluntarily
35 and without good cause attributable to the work, if the individual left
36 work to accompany his or her spouse who is an active member of the
37 United States Armed Forces, as defined in N.J.S.38A:1-1(g), to a new
38 place of residence outside the State, due to the armed forces member's
39 transfer to a new assignment in a different geographical location
40 outside the State, and the individual moves to the new place of
41 residence not more than nine months after the spouse is transferred,
42 and upon arrival at the new place of residence the individual was in
43 all respects available for suitable work. No employer's account shall
44 be charged for the payment of benefits to an individual who left work
45 under the circumstances contained in this subsection (k), except that
46 this shall not be construed as relieving the State of New Jersey and
47 any other governmental entity or instrumentality or nonprofit
48 organization electing or required to make payments in lieu of

1 contributions from its responsibility to make all benefit payments
2 otherwise required by law and from being charged for those benefits
3 as otherwise required by law.
4 (cf: P.L.2018, c.112)

5
6 2. This act shall take effect immediately.

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8

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STATEMENT

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11 This bill permits an employee to receive unemployment benefits
12 if the employee leaves employment upon receipt of an offer of
13 employment from another employer, but the offer is rescinded
14 through no fault of the employee. The bill also, for purposes of
15 benefit eligibility, increases the maximum time period between when
16 the employee leaves work and when the subsequent work is
17 scheduled to commence from seven days to 10 days.

18 The purpose of this bill is to codify into statute the holdings of the
19 court in *McClain v. Bd. of Review, Dep't of Labor*, 237 N.J. 445
20 (2019). In that case, the court held that an employee who leaves one
21 job to take another job, but, through no fault of the employee, has the
22 offer of employment rescinded before the employment begins, is
23 entitled to unemployment benefits.