

[First Reprint]

ASSEMBLY, No. 3861

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MAY 7, 2018

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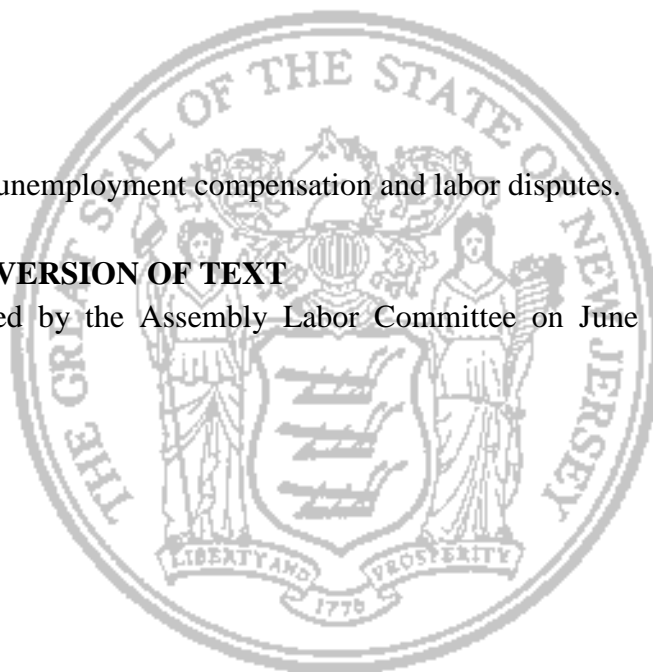
**Assemblymen Benson, Houghtaling, Assemblywoman Murphy,
Assemblyman Johnson, Assemblywoman McKnight and Senator
Greenstein**

SYNOPSIS

Concerns unemployment compensation and labor disputes.

CURRENT VERSION OF TEXT

As reported by the Assembly Labor Committee on June 14, 2018, with amendments.



(Sponsorship Updated As Of: 6/26/2018)

1 AN ACT concerning unemployment compensation and labor
2 disputes 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 weeks which immediately follow that week, as determined in
35 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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALA committee amendments adopted June 14, 2018.

1 written warning by an employer, falsification of records, physical
2 assault or threats that do not constitute gross misconduct as defined
3 in this section, misuse of benefits, misuse of sick time, abuse of
4 leave, theft of company property, excessive use of intoxicants or
5 drugs on work premises, theft of time, or where the behavior is
6 malicious and deliberate but is not considered gross misconduct as
7 defined in this section.

8 In the event the discharge should be rescinded by the employer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

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

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

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

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

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

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

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

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

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

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

40 (3) For any claim for a period of unemployment commencing on
41 or after '【April 10, 2016】 July 1, 2018', no disqualification under
42 this subsection (d) shall apply if the labor dispute is caused by the
43 failure or refusal of the employer to comply with an agreement or
44 contract between the employer and the claimant, including a
45 collective bargaining agreement with a union representing the
46 claimant, or a State or federal law pertaining to hours, wages, or
47 other conditions of work.

1 (4) For any claim for a period of unemployment commencing on
2 or after ¹[April 10, 2016] July 1, 2018¹, if the unemployment is
3 caused by a labor dispute, including a strike or other concerted
4 activities of employees at the claimant's workplace, whether or not
5 authorized or sanctioned by a union representing the claimant, but
6 not including a dispute subject to the provisions of paragraphs (2)
7 or (3) of this subsection (d), the claimant shall not be provided
8 benefits for a period of the first 30 days following the
9 commencement of the unemployment caused by the labor dispute,
10 except that the period without benefits shall not apply if the
11 employer hires a permanent replacement worker for the claimant's
12 position. A replacement worker shall be presumed to be permanent
13 unless the employer certifies in writing that the claimant will be
14 permitted to return to his or her prior position upon conclusion of
15 the dispute. If the employer does not permit the return, the claimant
16 shall be entitled to recover any benefits lost as a result of the 30 day
17 waiting period before receiving benefits, and the department may
18 impose a penalty upon the employer of up to \$750 per employee per
19 week of benefits lost. The penalty collected shall be paid into the
20 unemployment compensation auxiliary fund established pursuant to
21 subsection (g) of R.S.43:21-14.

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

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

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

42 (2) A disqualification under this subsection shall not preclude
43 the 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
2 any negotiable or nonnegotiable instrument for the payment of
3 money from these funds, or to recover money erroneously or
4 illegally obtained by an individual from any fund created or
5 established under 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
8 denied benefits for any week because the individual is in training
9 approved under section 236(a)(1) of the "Trade Act of 1974,"
10 Pub.L.93-618 (19 U.S.C. s.2296 (a)(1)) nor shall the individual be
11 denied benefits by reason of leaving work to enter this training,
12 provided the work left is not suitable employment, or because of the
13 application to any week in training of provisions in this chapter
14 (R.S.43:21-1 et seq.), or any applicable federal unemployment
15 compensation law, relating to availability for work, active search
16 for work, or refusal to accept 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
21 "Trade Act of 1974," Pub.L.93-618 (19 U.S.C. s.2101 et seq.) and
22 wages for this work at not less than 80% of the individual's average
23 weekly wage, as determined for the purposes of the "Trade Act of
24 1974."

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

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

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

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

1 (C.2C:25-19). No employer's account shall be charged for the
2 payment of benefits to an individual who left work due to
3 circumstances resulting from the individual being a victim of
4 domestic violence.

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

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

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

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

14 (4) Medical documentation of the domestic violence;

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

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

22 For the purposes of this subsection (j):

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

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

1 construed as relieving the State of New Jersey and any other
2 governmental entity or instrumentality or nonprofit organization
3 electing or required to make payments in lieu of contributions from
4 its responsibility to make all benefit payments otherwise required
5 by law and from being charged for those benefits as otherwise
6 required by law.

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

8

9 2. This act shall take effect immediately.