

SENATE, No. 3347

STATE OF NEW JERSEY

INTRODUCED MAY 23, 1983

By Senator DiFRANCESCO

(Without Reference)

AN ACT concerning unemployment compensation and amending
R. S. 43:21-4.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

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

2 43:21-4. Benefit eligibility conditions. An unemployed indi-
3 vidual shall be eligible to receive benefits with respect to any week
4 only if it appears that:

5 (a) The individual has registered for work at, and thereafter
6 continued to report at, an employment office in accordance with
7 such regulations as the division may prescribe, except that the
8 division may, by regulation, waive or alter either or both of the
9 requirements of this subsection as to individuals attached to regu-
10 lar jobs, and as to such other types of cases or situations with
11 respect to which the division finds that compliance with such
12 requirements would be oppressive, or would be inconsistent with
13 the purpose of this act; provided, that no such regulation shall
14 conflict with subsection (a) of R. S. 43:21-3.

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

17 (c) (1) The individual is able to work, and is available for
18 work, and has demonstrated to be actively seeking work, except
19 as hereinafter provided in this subsection or in subsection (f) of
20 this section.

21 (2) The director may modify the requirement of actively seek-
22 ing work if such modification of this requirement is warranted by
23 economic conditions.

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 printed in italics *thus* is new matter.

24 (3) No individual, who is otherwise eligible, shall be deemed
25 ineligible, or unavailable for work, because the individual is on
26 vacation, without pay, during said week, if said vacation is not the
27 result of the individual's own action as distinguished from any
28 collective action of a collective bargaining agent or other action
29 beyond the individual's control.

30 (4) Subject to such limitations and conditions as the division
31 may prescribe, an individual, who is otherwise eligible, shall not be
32 deemed unavailable for work or ineligible because the individual
33 is attending a training program approved for the individual by
34 the division to enhance the individual's employment opportunities
35 or because the individual failed or refused to accept work while
36 attending such program.

37 (5) An unemployed individual, who is otherwise eligible, shall
38 not be deemed unavailable for work or ineligible solely by reason
39 of the individual's attendance before a court in response to a sum-
40 mons for service on a jury.

41 (d) The individual has been totally or partially unemployed
42 for a waiting period of one week in the benefit year which includes
43 that week. When benefits become payable with respect to the third
44 consecutive week next following the waiting period, the individual
45 shall be eligible to receive benefits as appropriate with respect to
46 the waiting period. No week shall be counted as a week of unem-
47 ployment for the purposes of this subsection:

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

52 (2) If it has constituted a waiting period week under *the* tempo-
53 rary disability benefits law;

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

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

58 (e) With respect to a base year as defined in subsection (c) of
59 R. S. 43:21-19 the individual has established at least 20 base weeks
60 as defined in subsection (t) of R. S. 43:21-19, or, in the alternative,
61 has earned \$2,200.00 or more in the individual's base year, except
62 that with respect to benefit years commencing on or after January
63 1, 1978, an individual's base week wages in the base year shall
64 include wages paid for previously uncovered services. For the
65 purposes of this subsection, the term "previously uncovered
66 services" means services—

67 (1) Which were not employment as defined in R. S. 43:21-19
68 (i)(1) and were not services covered pursuant to R. S. 43:21-8 at
69 any time during the one-year period ending December 31, 1975; and

70 (2) Which—

71 (A) are agricultural labor (as defined in R. S. 43:21-19(i)
72 (1)(I)) or domestic service (as defined in R. S. 43:21-19 (i)(1)
73 (J)), or

74 (B) are services performed by an employee of a govern-
75 mental unit or instrumentality in employment as defined in
76 R. S. 43:21-19(i)(1)(B)(ii), or by an employee of a nonprofit
77 educational institution which is not an institution of higher
78 education, as provided in R. S. 43:21-19(i)(1)(D)(iii);

79 except to the extent that assistance under Title II of the Emer-
80 gency Jobs and Unemployment Assistance Act of 1974 was paid on
81 the basis of such services. To the extent that the unemployment
82 compensation fund is reimbursed pursuant to section 121 of the
83 Federal Unemployment Compensation Amendments of 1976
84 (Public Law 94-566), an employer's account shall not be charged
85 for that portion of benefits paid to any individual attributable to
86 base year wages for previously uncovered services, nor shall any
87 nonprofit organization or governmental unit or instrumentality
88 which elects to make payments in lieu of contributions into the
89 unemployment fund be liable to make payments with respect to
90 that portion of benefits paid to any individual attributable to base
91 year wages for previously uncovered services as defined herein].

92 (f) (1) The individual has suffered any accident or sickness not
93 compensable under the Workers' Compensation Law (Title 34 of
94 the Revised Statutes) and resulting in the individual's total dis-
95 ability to perform any work for remuneration, and would be eligi-
96 ble to receive benefits under this chapter (R. S. 43:21-1 et seq.)
97 (without regard to the maximum amount of benefits payable during
98 any benefit year) except for the inability to work and has furnished
99 notice and proof of claim to the division, in accordance with its
100 rules and regulations, and payment is not precluded by the pro-
101 visions of R. S. 43:21-3 (d); provided, however, that benefits paid
102 under this subsection (f) shall be computed on the basis of only
103 those base year wages earned by the claimant as a "covered indi-
104 vidual" as defined in R. S. 43:21-27 (b); provided further, that no
105 benefits shall be payable under this subsection to any individual:

106 (A) For any period during which such individual is not
107 under the care of a legally licensed physician, dentist, *optom-*
108 *etrist*, podiatrist or chiropractor;

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

110 (C) For any period of disability due to willfully or inten-
111 tionally self-inflicted injury, or to injuries sustained in the
112 perpetration by the individual of a [high misdemeanor] *crime*
113 *of the first, second or third degree;*

114 (D) For any week with respect to which or a part of which
115 the individual has received or is seeking benefits under any
116 unemployment compensation or disability benefit law of any
117 other state or of the United States; provided, that if the ap-
118 appropriate agency of such other state or of the United States
119 finally determines that the individual is not entitled to such
120 benefits, this disqualification shall not apply;

121 (E) For any week with respect to which or part of which
122 the individual has received or is seeking disability benefits
123 under the temporary disability benefits law;

124 (F) For any period of disability commencing while such
125 individual is a "covered individual" as defined in subsection
126 3 (b) of the temporary disability benefits law (P. L. 1948,
127 c. 110).

128 (2) Benefit payments under this subsection shall be charged to
129 and paid from the State disability benefits fund established by the
130 temporary disability benefits law, and shall not be charged to any
131 employer account in computing any employer's experience rate
132 for contributions payable under this chapter.

133 (g) Benefits based on service in employment defined in sub-
134 paragraphs (B) and (C) of R. S. 43:21-19 (i) (1) shall be payable
135 in the same amount and on the terms and subject to the same
136 conditions as benefits payable on the basis of other service subject
137 to the Unemployment Compensation Law; except that notwith-
138 standing any other provisions of the Unemployment Compensation
139 Law:

140 (1) With respect to service performed after December 31, 1977,
141 in an instructional, research, or principal administrative capacity
142 for an educational institution, benefits shall not be paid based on
143 such services for any week of unemployment commencing during
144 the period between two successive academic years, or during a
145 similar period between two regular terms, whether or not succes-
146 sive, or during a period of paid sabbatical leave provided for in the
147 individual's contract, to any individual if such individual performs
148 such services in the first of such academic years (or terms) and if
149 there is a contract or a reasonable assurance that such individual
150 will perform services in any such capacity for any educational
151 institution in the second of such academic years or terms;

152 (2) With respect to *weeks of unemployment beginning after*

153 *September 3, 1982, on the basis of service performed [after*
154 *December 31, 1977]* in any other capacity for an educational
155 institution [(other than an institution of higher education as
156 defined in R. S. 43:21-19 (y) (2))] benefits shall not be paid on
157 the basis of such services to any individual for any week which
158 commences during a period between two successive academic years
159 or terms if such individual performs such services in the first of
160 such academic years or terms and there is a reasonable assurance
161 that such individual will perform such services in the second of
162 such academic years or terms, *except that if benefits are denied*
163 *to any individual under this paragraph (2) and the individual was*
164 *not offered an opportunity to perform these services for the edu-*
165 *cational institution for the second of any academic years or terms,*
166 *the individual shall be entitled to a retroactive payment of benefits*
167 *for each week for which the individual filed a timely claim for*
168 *benefits and for which benefits were denied solely by reasons of*
169 *this clause;*

170 (3) With respect to those services described in paragraph (1)
171 and (2) above, benefits shall not be paid on the basis of such ser-
172 vices to any individual for any week which commences during an
173 established and customary vacation period or holiday recess if such
174 individual performs such services in the period immediately before
175 such vacation period or holiday recess, and there is a reasonable
176 assurance that such individual will perform such services in the
177 period immediately following such period or holiday recess.

178 (4) *With respect to any services described in paragraphs (1)*
179 *and (2) above, benefits shall not be paid as specified in paragraphs*
180 *(1), (2), and (3) above to any individual who performed those*
181 *services in an educational institution while in the employ of an*
182 *educational service agency, and for this purpose the term "educa-*
183 *tional service agency" means a governmental agency or govern-*
184 *mental entity which is established and operated exclusively for the*
185 *purpose of providing those services to one or more educational*
186 *institutions.*

187 (h) Benefits shall not be paid to any individual on the basis of
188 any services, substantially all of which consist of participating in
189 sports or athletic events or training or preparing to so participate,
190 for any week which commences during the period between two
191 successive sport seasons (or similar periods) if such individual
192 performed such services in the first of such seasons (or similar
193 periods) and there is a reasonable assurance that such individual
194 will perform such services in the later of such seasons (or similar
195 periods).

196 (i) (1) Benefits shall not be paid on the basis of services per-
 197 formed by an alien unless such alien is an individual who [has
 198 been] *was* lawfully admitted for permanent residence *at the time*
 199 *the services were performed and was lawfully present for purposes*
 200 *of performing the services* or otherwise [is] *was* permanently
 201 residing in the United States under color of law *at the time the*
 202 *services were performed* (including an alien who is lawfully
 203 present in the United States as a result of the application of the
 204 provisions of section 203 (a) (7) or section 212 (d) (5) of the
 205 Immigration and Nationality Act); provided, that any modifica-
 206 tions of the provisions of section 3304 (a) (14) of the Federal
 207 Unemployment Tax Act as provided by Public Law 94-566 which
 208 specify other conditions or other effective dates than stated herein
 209 for the denial of benefits based on services performed by aliens
 210 and which modifications are required to be implemented under
 211 State law as a condition for full tax credit against the tax imposed
 212 by the Federal Unemployment Tax Act, shall be deemed applicable
 213 under the provisions of this section.

214 (2) Any data or information required of individuals applying
 215 for benefits to determine whether benefits are not payable to them
 216 because of their alien status shall be uniformly required from all
 217 applicants for benefits.

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

222 (j) Notwithstanding any other provision of this chapter, the
 223 director may, to the extent that it may be deemed efficient and
 224 economical, provide for consolidated administration by one or
 225 more representatives or deputies of claims made pursuant to sub-
 226 section (f) of this section with those made pursuant to Article III
 227 (State plan) of the Temporary Disability Benefits Law.

1 2. This act shall take effect immediately except that the amend-
 2 ments to subsection (g) of R. S. 43:21-4 shall be retroactive to
 3 September 3, 1982.

STATEMENT

In 1978, as a result of mandatory federal legislation, unemploy-
 ment insurance coverage was extended to virtually all public
 and private employees of elementary and secondary schools.
 Federal law also mandated all states to enact legislation which
 would deny benefits during vacation periods between terms to any

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individual employed in an instructional, research, or principal administrative capacity for an educational institution. At the same time, federal law permitted states to deny benefits during vacation periods between terms to nonprofessional employees of elementary and secondary schools. New Jersey and 45 other states have adopted this provision in their state laws. (Nonprofessional employees of institutions of higher education were not affected by this provision).

Under the Tax Equity and Fiscal Responsibility Act of 1982, (Pub. L. 97-248) federal law now requires all non-professional employees of educational institutions (including institutions of higher education) to be treated in the same manner. This bill complies with the federal law by extending the denial of benefits provision during vacation periods to those individuals employed in a nonprofessional capacity by institutions of higher education.

Also included in this section is a mandatory federal provision which would provide for retroactive benefit payments to nonprofessional employees of educational institutions during vacation periods if they are not given the opportunity to return to work at the beginning of the new school year or term. Benefits would be paid only if the individual had continued to report and was otherwise eligible for benefits during the period in question.

Also included is a provision to deny benefits during vacation periods to employees of educational service agencies in order to insure consistent treatment of all individuals employed by education related institutions.

The Federal Unemployment Tax Act (FUTA, 26 U. S. C. 3301 et seq.) establishes minimum standards to which State laws shall conform before they will be approved or certified by the United States Secretary of Labor. Lack of approval or certification of a State law can result in the denial of federal tax credits to employers in that state and the withholding or suspension of administrative grants for the Unemployment Insurance and Job Services operations.

Failure to adopt these mandatory provisions could result in the loss of over \$500 million annually in tax credits for New Jersey employers under the Federal Unemployment Tax Act. Additionally, the Department of Labor could lose up to \$70 million annually in administrative grants.

OFFICE OF THE GOVERNOR

RELEASE: IMMEDIATE

CONTACT: PAUL WOLCOTT

MONDAY, JUNE 27, 1983

Governor Thomas H. Kean today signed the following bills:

S-3347, sponsored by State Senator Donald T. DiFrancesco, R-Union, which amends the Unemployment Compensation Law to comply with Federal requirements. The bill requires that all non-professional employees of institutions of higher learning be denied unemployment benefits during vacation periods between school terms. The bill also extends that denial of benefits during summer vacations to employees of educational service agencies which supply support and technical services to boards of education and non-public schools.

S-1170, sponsored by State Senator John F. Russo, D-Ocean, which adds penalties, including forfeiture of vessel involved for those convicted of illegally taking clams and oysters from leased lands. The bill was the subject of a conditional veto.

S-1326, sponsored by State Senator Richard J. Codey, D-Essex, which regulates the resale of tickets to entertainment events. The bill was the subject of a conditional veto.

A-3414, sponsored by Assemblyman Dean A. Gallo, R-Morris, which appropriates \$150,000 as a loan to the New Jersey Employees Deferred Compensation Plan.

A-1811, sponsored by Assemblyman Garabed Haytaian, R-Warren, which tightens the accountability requirements for Division of Mental Retardation employees responsible for the management of funds belonging to retarded persons living in private residential care facilities.

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