

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

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HEARINGS: No

NEWSPAPER ARTICLES: No

RH/CL

P.L. 2018, CHAPTER 112, *approved August 24, 2018*
Assembly, No. 3871 (*First Reprint*)

1 AN ACT concerning disqualification from unemployment
2 compensation 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]** five weeks which immediately follow that week, as
35 determined in 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**

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 18, 2018.

1 case. Examples of severe misconduct include, but are not
2 necessarily limited to, the following: repeated violations of an
3 employer's rule or policy, repeated lateness or absences after a
4 written warning by an employer, falsification of records, physical
5 assault or threats that do not constitute gross misconduct as defined
6 in this section, misuse of benefits, misuse of sick time, abuse of
7 leave, theft of company property, excessive use of intoxicants or
8 drugs on work premises, theft of time, or where the behavior is
9 malicious and deliberate but is not considered gross misconduct as
10 defined in this section.]

11 "Misconduct" means ¹[behavior, other than gross misconduct,]
12 conduct¹ which is improper, intentional, connected with the
13 individual's work, ¹[malicious,]¹ within the individual's control,
14 not a good faith error of judgment or discretion, and is either a
15 deliberate ¹[failure] refusal¹, without good cause, to comply with
16 the employer's lawful and reasonable rules made known to the
17 employee or a ¹deliberate¹ disregard of standards of behavior the
18 employer has a reasonable right to expect, including reasonable
19 safety standards and reasonable standards for a workplace free of
20 drug and substance abuse. ¹["Misconduct" includes: (1) repeated
21 failure, without good cause, to comply with instructions of the
22 employer which are lawful, reasonable, and not requiring the
23 employee to perform services beyond the scope of the employee's
24 customary job duties; (2) falsification of an employment application
25 or other record required by the employer to determine the
26 employee's qualifications or suitability for the job or omitting
27 information which created a material misrepresentation of the
28 employee's qualifications or suitability for the job; (3) tardiness
29 without good cause which is chronic or excessive and repeated after
30 written warnings from the employer; and (4) repeated unauthorized
31 absences without good cause, such as illness or other compelling
32 personal circumstance, or unjustified failure to provide notice prior
33 to the unauthorized absences. An individual's failure to meet
34 standards regarding quality or quantity of work shall not be
35 considered misconduct unless the employer demonstrates to the
36 division that the standards are reasonable and that the individual
37 deliberately performed below the standards. "Misconduct" does not
38 include inadvertence or ordinary negligence in isolated instances, or
39 inefficiency or failure to perform as the result of inability or
40 incapacity.]¹

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

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

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

13 To sustain disqualification from benefits because of misconduct
14 under this subsection (b), the burden of proof is upon the employer,
15 who shall, prior to ¹[any] a¹ determination ¹[of] by¹ the ¹[division
16 regarding] department of¹ misconduct, provide ¹written¹
17 documentation ¹[, written at or immediately following the time of
18 the misconduct,]¹ demonstrating that the employee's actions
19 constitute ¹[simple]¹ misconduct or gross misconduct.

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

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

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

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

42 (f) For any week with respect to which or a part of which the
43 individual has received or is seeking unemployment benefits under
44 an unemployment compensation law of any other state or of the
45 United States; provided that if the appropriate agency of the other
46 state or of the United States finally determines that the individual is
47 not entitled to unemployment benefits, this disqualification shall not
48 apply.

1 (g) (1) For a period of one year from the date of the discovery
2 by the division of the illegal receipt or attempted receipt of benefits
3 contrary to the provisions of this chapter, as the result of any false
4 or fraudulent representation; provided that any disqualification may
5 be appealed in the same manner as any other disqualification
6 imposed hereunder; and provided further that a conviction in the
7 courts of this State arising out of the illegal receipt or attempted
8 receipt of these benefits in any proceeding instituted against the
9 individual under the provisions of this chapter or any other law of
10 this State shall be conclusive upon the appeals tribunal and the
11 board of review.

12 (2) A disqualification under this subsection shall not preclude
13 the prosecution of any civil, criminal or administrative action or
14 proceeding to enforce other provisions of this chapter for the
15 assessment and collection of penalties or the refund of any amounts
16 collected as benefits under the provisions of R.S.43:21-16, or to
17 enforce any other law, where an individual obtains or attempts to
18 obtain by theft or robbery or false statements or representations any
19 money from any fund created or established under this chapter or
20 any negotiable or nonnegotiable instrument for the payment of
21 money from these funds, or to recover money erroneously or
22 illegally obtained by an individual from any fund created or
23 established under this chapter.

24 (h) (1) Notwithstanding any other provisions of this chapter
25 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be
26 denied benefits for any week because the individual is in training
27 approved under section 236(a)(1) of the "Trade Act of 1974,"
28 Pub.L.93-618 (19 U.S.C. s.2296 (a)(1)) nor shall the individual be
29 denied benefits by reason of leaving work to enter this training,
30 provided the work left is not suitable employment, or because of the
31 application to any week in training of provisions in this chapter
32 (R.S.43:21-1 et seq.), or any applicable federal unemployment
33 compensation law, relating to availability for work, active search
34 for work, or refusal to accept work.

35 (2) For purposes of this subsection (h), the term "suitable"
36 employment means, with respect to an individual, work of a
37 substantially equal or higher skill level than the individual's past
38 adversely affected employment, as defined for purposes of the
39 "Trade Act of 1974," Pub.L.93-618 (19 U.S.C. s.2101 et seq.) and
40 wages for this work at not less than 80% of the individual's average
41 weekly wage, as determined for the purposes of the "Trade Act of
42 1974."

43 (i) For benefit years commencing after June 30, 1984, for any
44 week in which the individual is a student in full attendance at, or on
45 vacation from, an educational institution, as defined in subsection
46 (y) of R.S.43:21-19; except that this subsection shall not apply to
47 any individual attending a training program approved by the
48 division to enhance the individual's employment opportunities, as

1 defined under subsection (c) of R.S.43:21-4; nor shall this
2 subsection apply to any individual who, during the individual's base
3 year, earned sufficient wages, as defined under subsection (e) of
4 R.S.43:21-4, while attending an educational institution during
5 periods other than established and customary vacation periods or
6 holiday recesses at the educational institution, to establish a claim
7 for benefits. For purposes of this subsection, an individual shall be
8 treated as a full-time student for any period:

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

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

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

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

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

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

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

32 (4) Medical documentation of the domestic violence;

33 (5) Certification from a certified Domestic Violence Specialist
34 or the director of a designated domestic violence agency that the
35 individual is a victim of domestic violence; or

36 (6) Other documentation or certification of the domestic
37 violence provided by a social worker, member of the clergy, shelter
38 worker or other professional who has assisted the individual in
39 dealing with the domestic violence.

40 For the purposes of this subsection (j):

41 "Certified Domestic Violence Specialist" means a person who
42 has fulfilled the requirements of certification as a Domestic
43 Violence Specialist established by the New Jersey Association of
44 Domestic Violence Professionals; and "designated domestic
45 violence agency" means a county-wide organization with a primary
46 purpose to provide services to victims of domestic violence, and
47 which provides services that conform to the core domestic violence
48 services profile as defined by the Division of Youth and Family

1 Services in the Department of Children and Families and is under
2 contract with the division for the express purpose of providing such
3 services.

4 (k) Notwithstanding any other provisions of this chapter
5 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be
6 denied benefits for any week in which the individual left work
7 voluntarily and without good cause attributable to the work, if the
8 individual left work to accompany his or her spouse who is an
9 active member of the United States Armed Forces, as defined in
10 N.J.S.38A:1-1(g), to a new place of residence outside the State, due
11 to the armed forces member's transfer to a new assignment in a
12 different geographical location outside the State, and the individual
13 moves to the new place of residence not more than nine months
14 after the spouse is transferred, and upon arrival at the new place of
15 residence the individual was in all respects available for suitable
16 work. No employer's account shall be charged for the payment of
17 benefits to an individual who left work under the circumstances
18 contained in this subsection (k), except that this shall not be
19 construed as relieving the State of New Jersey and any other
20 governmental entity or instrumentality or nonprofit organization
21 electing or required to make payments in lieu of contributions from
22 its responsibility to make all benefit payments otherwise required
23 by law and from being charged for those benefits as otherwise
24 required by law.

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

26

27 2. This act shall take effect immediately.

28

29

30

31

32 Concerns disqualification from unemployment benefits for
33 misconduct.

ASSEMBLY, No. 3871

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 7, 2018

Sponsored by:

Assemblyman NICHOLAS CHIARAVALLOTI

District 31 (Hudson)

Assemblyman JOSEPH V. EGAN

District 17 (Middlesex and Somerset)

SYNOPSIS

Concerns disqualification from unemployment benefits for misconduct.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/15/2018)

1 AN ACT concerning disqualification from unemployment
2 compensation 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]** five weeks which immediately follow that week, as
35 determined in 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**
45 **written warning by an employer, falsification of records, physical**

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

7 “Misconduct” means behavior, other than gross misconduct,
8 which is improper, intentional, connected with the individual’s
9 work, malicious, within the individual’s control, not a good faith
10 error of judgment or discretion, and is either a deliberate failure,
11 without good cause, to comply with the employer’s lawful and
12 reasonable rules made known to the employee or a disregard of
13 standards of behavior the employer has a reasonable right to expect,
14 including reasonable safety standards and reasonable standards for a
15 workplace free of drug and substance abuse. “Misconduct”
16 includes: (1) repeated failure, without good cause, to comply with
17 instructions of the employer which are lawful, reasonable, and not
18 requiring the employee to perform services beyond the scope of the
19 employee’s customary job duties; (2) falsification of an
20 employment application or other record required by the employer to
21 determine the employee’s qualifications or suitability for the job or
22 omitting information which created a material misrepresentation of
23 the employee’s qualifications or suitability for the job; (3) tardiness
24 without good cause which is chronic or excessive and repeated after
25 written warnings from the employer; and (4) repeated unauthorized
26 absences without good cause, such as illness or other compelling
27 personal circumstance, or unjustified failure to provide notice prior
28 to the unauthorized absences. An individual’s failure to meet
29 standards regarding quality or quantity of work shall not be
30 considered misconduct unless the employer demonstrates to the
31 division that the standards are reasonable and that the individual
32 deliberately performed below the standards. “Misconduct” does not
33 include inadvertence or ordinary negligence in isolated instances, or
34 inefficiency or failure to perform as the result of inability or
35 incapacity.

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

42 If the discharge was for gross misconduct connected with the
43 work because of the commission of an act punishable as a crime of
44 the first, second, third or fourth degree under the "New Jersey Code
45 of Criminal Justice," N.J.S.2C:1-1 et seq., the individual shall be
46 disqualified in accordance with the disqualification prescribed in
47 subsection (a) of this section and no benefit rights shall accrue to

1 any individual based upon wages from that employer for services
2 rendered prior to the day upon which the individual was discharged.

3 The director shall insure that any appeal of a determination
4 holding the individual disqualified for gross misconduct in
5 connection with the work shall be expeditiously processed by the
6 appeal tribunal.

7 To sustain disqualification from benefits because of misconduct
8 under this subsection (b), the burden of proof is upon the employer,
9 who shall, prior to any determination of the division regarding
10 misconduct, provide documentation, written at or immediately
11 following the time of the misconduct, demonstrating that the
12 employee's actions constitute simple misconduct or gross
13 misconduct.

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

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

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

47 (d) If it is found that this unemployment is due to a stoppage of
48 work which exists because of a labor dispute at the factory,

1 establishment or other premises at which the individual is or was
2 last employed.

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

5 (a) The individual is not participating in or financing or directly
6 interested in the labor dispute which caused the stoppage of work;
7 and

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

18 (2) For any claim for a period of unemployment commencing on
19 or after December 1, 2004, no disqualification under this subsection
20 (d) shall apply if it is shown that the individual has been prevented
21 from working by the employer, even though the individual's
22 recognized or certified majority representative has directed the
23 employees in the individual's collective bargaining unit to work
24 under the preexisting terms and conditions of employment, and the
25 employees had not engaged in a strike immediately before being
26 prevented from working.

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

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

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

47 (2) A disqualification under this subsection shall not preclude
48 the prosecution of any civil, criminal or administrative action or

1 proceeding to enforce other provisions of this chapter for the
2 assessment and collection of penalties or the refund of any amounts
3 collected as benefits under the provisions of R.S.43:21-16, or to
4 enforce any other law, where an individual obtains or attempts to
5 obtain by theft or robbery or false statements or representations any
6 money from any fund created or established under this chapter or
7 any negotiable or nonnegotiable instrument for the payment of
8 money from these funds, or to recover money erroneously or
9 illegally obtained by an individual from any fund created or
10 established under this chapter.

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

22 (2) For purposes of this subsection (h), the term "suitable"
23 employment means, with respect to an individual, work of a
24 substantially equal or higher skill level than the individual's past
25 adversely affected employment, as defined for purposes of the
26 "Trade Act of 1974," Pub.L.93-618 (19 U.S.C. s.2101 et seq.) and
27 wages for this work at not less than 80% of the individual's average
28 weekly wage, as determined for the purposes of the "Trade Act of
29 1974."

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

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

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

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

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

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

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

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

19 (4) Medical documentation of the domestic violence;

20 (5) Certification from a certified Domestic Violence Specialist
21 or the director of a designated domestic violence agency that the
22 individual is a victim of domestic violence; or

23 (6) Other documentation or certification of the domestic
24 violence provided by a social worker, member of the clergy, shelter
25 worker or other professional who has assisted the individual in
26 dealing with the domestic violence.

27 For the purposes of this subsection (j):

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

39 (k) Notwithstanding any other provisions of this chapter
40 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be
41 denied benefits for any week in which the individual left work
42 voluntarily and without good cause attributable to the work, if the
43 individual left work to accompany his or her spouse who is an
44 active member of the United States Armed Forces, as defined in
45 N.J.S.38A:1-1(g), to a new place of residence outside the State, due
46 to the armed forces member's transfer to a new assignment in a
47 different geographical location outside the State, and the individual
48 moves to the new place of residence not more than nine months

1 after the spouse is transferred, and upon arrival at the new place of
2 residence the individual was in all respects available for suitable
3 work. No employer's account shall be charged for the payment of
4 benefits to an individual who left work under the circumstances
5 contained in this subsection (k), except that this shall not be
6 construed as relieving the State of New Jersey and any other
7 governmental entity or instrumentality or nonprofit organization
8 electing or required to make payments in lieu of contributions from
9 its responsibility to make all benefit payments otherwise required
10 by law and from being charged for those benefits as otherwise
11 required by law.

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

13

14 2. This act shall take effect immediately.

15

16

17

STATEMENT

18

19 This bill amends R.S.43:21-5 to make a number changes in the
20 unemployment insurance (UI) law regarding the disqualification of
21 applicants for UI benefits separated from work because of alleged
22 misconduct.

23 The bill reduces, from seven weeks to five weeks, the duration of
24 time that a worker is disqualified from receiving UI benefits if the
25 worker is discharged from work for misconduct.

26 The bill provides that the burden of proof to demonstrate
27 misconduct is on the employer, who is required, before any
28 determination by the department, to provide documentation of the
29 misconduct written at or immediately following the time of the
30 misconduct.

31 The bill defines "misconduct" as behavior which is improper,
32 intentional, connected with the individual's work, malicious, within
33 the individual's control, not a good faith error of judgment or
34 discretion, and is either a deliberate failure, without good cause, to
35 comply with the employer's lawful and reasonable rules made
36 known to the employee or a disregard of standards of behavior the
37 employer has a reasonable right to expect, including reasonable
38 safety standards and reasonable standards for a workplace free of
39 drug and substance abuse. The bill specifies that the following
40 behaviors are misconduct:

41 1. repeated failure, without good cause, to comply with lawful,
42 reasonable instructions of the employer not requiring the employee
43 to perform services beyond the scope of the employee's customary
44 job duties;

45 2. falsification of an employment application or other record
46 required by the employer to determine the employee's qualifications
47 or suitability for the job or omitting information which creates a
48 material misrepresentation of employee qualifications or suitability;

1 3. chronic or excessive tardiness without good cause repeated
2 after written warnings; and

3 4. repeated unauthorized absences without good cause, or
4 unjustified failure to provide notice prior to unauthorized absences.

5 The bill provides that failure to meet standards regarding quality
6 or quantity of work is not considered to be misconduct unless the
7 employer demonstrates that the standards are reasonable and that
8 the individual deliberately performed below the standards. The bill
9 provides that misconduct does not include inadvertence or ordinary
10 negligence in isolated instances, or inefficiency or failure to
11 perform as the result of inability or incapacity.

12 The bill eliminates the category of “severe misconduct” from
13 provisions of the UI law regarding disqualification for misconduct.
14 The category of “severe misconduct” was added to the UI law by
15 P.L.2010, c.37, with the Governor’s conditional veto, which
16 amended the UI law to provide penalties concerning worker
17 misconduct which are more stringent than the UI law’s penalties for
18 misconduct, but less severe than the UI law’s penalties for “gross”
19 misconduct. The UI law had previously provided that a claimant
20 who is discharged for misconduct is disqualified for UI benefits for
21 five weeks following the week of discharge, and that a claimant
22 discharge for gross misconduct because of criminal acts connected
23 with work is disqualified until the worker is reemployed for eight
24 weeks. P.L.2010, c.37 provided that severe misconduct would
25 result in disqualification until a worker is reemployed for four
26 weeks.

27 P.L.2010, c.37, however, lacked clear definition of either
28 “misconduct” or its new category of “severe misconduct,” which
29 contributed to repeated court decisions preventing provisions of that
30 act concerning misconduct from being implemented.

31 This bill reinstates provisions of UI law on misconduct as they
32 had been before the enactment of P.L.2010, c.37, and modifies that
33 law by adding the requirement for written documentation of
34 misconduct, and adding the definition of misconduct described
35 above which is substantially the same in effect as the regulations
36 regarding misconduct which were in effect prior to the enactment of
37 P.L.2010, c.37, and subsequently repealed.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3871

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 18, 2018

The Assembly Labor Committee reports favorably and with committee amendments Assembly Bill No. 3871.

As amended, this bill amends R.S.43:21-5 to make a number changes in the unemployment insurance (UI) law regarding the disqualification of applicants for UI benefits separated from work because of alleged misconduct.

The bill reduces, from seven weeks to five weeks, the duration of time that a worker is disqualified from receiving UI benefits if the worker is discharged from work for misconduct.

As amended, the bill provides that the burden of proof is upon the employer to sustain disqualification of benefits by misconduct, who shall, prior to a determination by the department of misconduct, provide written documentation demonstrating that the employee's actions constitute misconduct or gross misconduct

As amended, the bill defines "misconduct" change the definition of misconduct to conduct which is improper, intentional, connected with the individual's work, within the individual's control, not a good faith error of judgment or discretion, and is either a deliberate refusal, without good cause, to comply with the employer's lawful and reasonable rules made known to the employee or a deliberate disregard of standards of behavior the employer has a reasonable right to expect, including reasonable safety standards and reasonable standards for a workplace free of drug and substance abuse.

The bill eliminates the category of "severe misconduct" from provisions of the UI law regarding disqualification for misconduct. The category of "severe misconduct" was added to the UI law by P.L.2010, c.37, with the Governor's conditional veto, which amended the UI law to provide penalties concerning worker misconduct which are more stringent than the UI law's penalties for misconduct, but less severe than the UI law's penalties for "gross" misconduct. The UI law had previously provided that a claimant who is discharged for misconduct is disqualified for UI benefits for five weeks following the week of discharge, and that a claimant discharge for gross misconduct because of criminal acts connected with work is disqualified until the worker is reemployed for eight weeks. P.L.2010, c.37 provided that

severe misconduct would result in disqualification until a worker is reemployed for four weeks.

P.L.2010, c.37, however, lacked clear definition of either “misconduct” or its new category of “severe misconduct,” which contributed to repeated court decisions preventing provisions of that act concerning misconduct from being implemented.

This bill reinstates provisions of UI law on misconduct as they had been before the enactment of P.L.2010, c.37, and modifies that law by adding the requirement for written documentation of misconduct, and adding the definition of misconduct described above which is substantially the same in effect as the regulations regarding misconduct which were in effect prior to the enactment of P.L.2010, c.37, and subsequently repealed.

As amended, the bill includes a provision that nothing in the bill will be construed to interfere with the exercise of rights protected under the “National Labor Relations Act” or the “New Jersey Employer-Employee Relations Act.”

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) change the definition of misconduct to conduct which is improper, intentional, connected with the individual’s work, within the individual’s control, not a good faith error of judgment or discretion, and is either a deliberate refusal, without good cause, to comply with the employer’s lawful and reasonable rules made known to the employee or a deliberate disregard of standards of behavior the employer has a reasonable right to expect, including reasonable safety standards and reasonable standards for a workplace free of drug and substance abuse;

(2) to amend the standard for sustaining disqualification of benefits by misconduct so that the burden of proof is upon the employer, who shall, prior to a determination by the department of misconduct, provide written documentation demonstrating that the employee’s actions constitute misconduct or gross misconduct; and

(3) to include a provision that nothing in the bill will be construed to interfere with the exercise of rights protected under the “National Labor Relations Act” or the “New Jersey Employer-Employee Relations Act”.

SENATE, No. 2439

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED APRIL 5, 2018

Sponsored by:

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

SYNOPSIS

Concerns disqualification from unemployment benefits.

CURRENT VERSION OF TEXT

As introduced.



S2439 DIEGNAN

2

1 AN ACT concerning disqualification from unemployment
2 compensation 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]** five weeks which immediately follow that week, as
35 determined in 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**
45 **written warning by an employer, falsification of records, physical**

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

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

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

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

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

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

47 (2) Notwithstanding any other provisions of this chapter, no
48 work shall be deemed suitable and benefits shall not be denied

1 under this chapter to any otherwise eligible individual for refusing
2 to accept new work under any of the following conditions: the
3 position offered is vacant due directly to a strike, lockout, or other
4 labor dispute; the remuneration, hours, or other conditions of the
5 work offered are substantially less favorable to the individual than
6 those prevailing for similar work in the locality; or, the individual,
7 as a condition of being employed, would be required to join a
8 company union or to resign from or refrain from joining any bona
9 fide labor organization.

10 (d) If it is found that this unemployment is due to a stoppage of
11 work which exists because of a labor dispute at the factory,
12 establishment or other premises at which the individual is or was
13 last employed.

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

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

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

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

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

40 (f) For any week with respect to which or a part of which the
41 individual has received or is seeking unemployment benefits under
42 an unemployment compensation law of any other state or of the
43 United States; provided that if the appropriate agency of the other
44 state or of the United States finally determines that the individual is
45 not entitled to unemployment benefits, this disqualification shall not
46 apply.

47 (g) (1) For a period of one year from the date of the discovery
48 by the division of the illegal receipt or attempted receipt of benefits

1 contrary to the provisions of this chapter, as the result of any false
2 or fraudulent representation; provided that any disqualification may
3 be appealed in the same manner as any other disqualification
4 imposed hereunder; and provided further that a conviction in the
5 courts of this State arising out of the illegal receipt or attempted
6 receipt of these benefits in any proceeding instituted against the
7 individual under the provisions of this chapter or any other law of
8 this State shall be conclusive upon the appeals tribunal and the
9 board of review.

10 (2) A disqualification under this subsection shall not preclude
11 the prosecution of any civil, criminal or administrative action or
12 proceeding to enforce other provisions of this chapter for the
13 assessment and collection of penalties or the refund of any amounts
14 collected as benefits under the provisions of R.S.43:21-16, or to
15 enforce any other law, where an individual obtains or attempts to
16 obtain by theft or robbery or false statements or representations any
17 money from any fund created or established under this chapter or
18 any negotiable or nonnegotiable instrument for the payment of
19 money from these funds, or to recover money erroneously or
20 illegally obtained by an individual from any fund created or
21 established under this chapter.

22 (h) (1) Notwithstanding any other provisions of this chapter
23 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be
24 denied benefits for any week because the individual is in training
25 approved under section 236(a)(1) of the "Trade Act of 1974,"
26 Pub.L.93-618 (19 U.S.C. s.2296 (a)(1)) nor shall the individual be
27 denied benefits by reason of leaving work to enter this training,
28 provided the work left is not suitable employment, or because of the
29 application to any week in training of provisions in this chapter
30 (R.S.43:21-1 et seq.), or any applicable federal unemployment
31 compensation law, relating to availability for work, active search
32 for work, or refusal to accept work.

33 (2) For purposes of this subsection (h), the term "suitable"
34 employment means, with respect to an individual, work of a
35 substantially equal or higher skill level than the individual's past
36 adversely affected employment, as defined for purposes of the
37 "Trade Act of 1974," Pub.L.93-618 (19 U.S.C. s.2101 et seq.) and
38 wages for this work at not less than 80% of the individual's average
39 weekly wage, as determined for the purposes of the "Trade Act of
40 1974."

41 (i) For benefit years commencing after June 30, 1984, for any
42 week in which the individual is a student in full attendance at, or on
43 vacation from, an educational institution, as defined in subsection
44 (y) of R.S.43:21-19; except that this subsection shall not apply to
45 any individual attending a training program approved by the
46 division to enhance the individual's employment opportunities, as
47 defined under subsection (c) of R.S.43:21-4; nor shall this
48 subsection apply to any individual who, during the individual's base

1 year, earned sufficient wages, as defined under subsection (e) of
2 R.S.43:21-4, while attending an educational institution during
3 periods other than established and customary vacation periods or
4 holiday recesses at the educational institution, to establish a claim
5 for benefits. For purposes of this subsection, an individual shall be
6 treated as a full-time student for any period:

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

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

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

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

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

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

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

30 (4) Medical documentation of the domestic violence;

31 (5) Certification from a certified Domestic Violence Specialist
32 or the director of a designated domestic violence agency that the
33 individual is a victim of domestic violence; or

34 (6) Other documentation or certification of the domestic
35 violence provided by a social worker, member of the clergy, shelter
36 worker or other professional who has assisted the individual in
37 dealing with the domestic violence.

38 For the purposes of this subsection (j):

39 "Certified Domestic Violence Specialist" means a person who
40 has fulfilled the requirements of certification as a Domestic
41 Violence Specialist established by the New Jersey Association of
42 Domestic Violence Professionals; and "designated domestic
43 violence agency" means a county-wide organization with a primary
44 purpose to provide services to victims of domestic violence, and
45 which provides services that conform to the core domestic violence
46 services profile as defined by the Division of Youth and Family
47 Services in the Department of Children and Families and is under

1 contract with the division for the express purpose of providing such
2 services.

3 (k) Notwithstanding any other provisions of this chapter
4 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be
5 denied benefits for any week in which the individual left work
6 voluntarily and without good cause attributable to the work, if the
7 individual left work to accompany his or her spouse who is an
8 active member of the United States Armed Forces, as defined in
9 N.J.S.38A:1-1(g), to a new place of residence outside the State, due
10 to the armed forces member's transfer to a new assignment in a
11 different geographical location outside the State, and the individual
12 moves to the new place of residence not more than nine months
13 after the spouse is transferred, and upon arrival at the new place of
14 residence the individual was in all respects available for suitable
15 work. No employer's account shall be charged for the payment of
16 benefits to an individual who left work under the circumstances
17 contained in this subsection (k), except that this shall not be
18 construed as relieving the State of New Jersey and any other
19 governmental entity or instrumentality or nonprofit organization
20 electing or required to make payments in lieu of contributions from
21 its responsibility to make all benefit payments otherwise required
22 by law and from being charged for those benefits as otherwise
23 required by law.

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

25

26 2. This act shall take effect immediately.

27

28

29

STATEMENT

30

31 This bill amends R.S.43:21-5 to eliminate the category of
32 "severe misconduct" from provisions of the New Jersey
33 "unemployment compensation law," R.S.43:21-1 et seq. which
34 authorize the disqualification from unemployment insurance (UI)
35 benefits because of workplace misconduct. The bill also reduces,
36 from seven weeks to five weeks, the duration of time that a worker
37 is disqualified from receiving UI benefits if the worker is
38 discharged from work for misconduct.

39 The category of "severe misconduct" was added to the UI law by
40 P.L.2010, c.37, with the Governor's conditional veto, which
41 amended the UI law to provide penalties concerning worker
42 misconduct which are more stringent than the UI law's penalties for
43 misconduct, but less severe than the UI law's penalties for "gross"
44 misconduct. The UI law had previously provided that a claimant
45 who is discharged for misconduct is disqualified for UI benefits for
46 five weeks following the week of discharge, and that a claimant
47 discharge for gross misconduct because of criminal acts connected
48 with work is disqualified until the worker is reemployed for eight

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8

1 weeks. P.L.2010, c.37 added the classification of severe
2 misconduct and provided that it would result in disqualification
3 until a worker is reemployed for four weeks.

4 P.L.2010, c.37, however, lacked clear definition of either
5 “misconduct” or its new category of “severe misconduct,” which
6 resulted in repeated court decisions preventing that act from being
7 implemented. This bill reinstates the UI law’s provisions on
8 misconduct as they had been before the enactment of P.L.2010,
9 c.37.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2439

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 18, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill. No. 2439, with committee amendments.

As amended, this bill amends R.S.43:21-5 to make a number changes in the unemployment insurance (UI) law regarding the disqualification of applicants for UI benefits separated from work because of alleged misconduct.

The bill reduces, from seven weeks to five weeks, the duration of time that a worker is disqualified from receiving UI benefits if the worker is discharged from work for misconduct.

The bill provides that the burden of proof is upon the employer to sustain disqualification of benefits by misconduct, who shall, prior to a determination by the department of misconduct, provide written documentation demonstrating that the employee's actions constitute misconduct or gross misconduct

The bill defines "misconduct" as conduct which is improper, intentional, connected with the individual's work, within the individual's control, not a good faith error of judgment or discretion, and is either a deliberate refusal, without good cause, to comply with the employer's lawful and reasonable rules made known to the employee or a deliberate disregard of standards of behavior the employer has a reasonable right to expect, including reasonable safety standards and reasonable standards for a workplace free of drug and substance abuse.

The bill eliminates the category of "severe misconduct" from provisions of the UI law regarding disqualification for misconduct. The category of "severe misconduct" was added to the UI law by P.L.2010, c.37, with the Governor's conditional veto, which amended the UI law to provide penalties concerning worker misconduct which are more stringent than the UI law's penalties for misconduct, but less severe than the UI law's penalties for "gross" misconduct. The UI law had previously provided that a claimant who is discharged for misconduct is disqualified for UI benefits for five weeks following the week of discharge, and that a claimant discharge for gross misconduct because of criminal acts connected with work is disqualified until the worker is reemployed for eight weeks. P.L.2010, c.37 provided that

severe misconduct would result in disqualification until a worker is reemployed for four weeks.

P.L.2010, c.37, however, lacked clear definition of either “misconduct” or its new category of “severe misconduct,” which contributed to repeated court decisions preventing provisions of that act concerning misconduct from being implemented.

This bill reinstates provisions of UI law on misconduct as they had been before the enactment of P.L.2010, c.37, and modifies that law by adding the requirement for written documentation of misconduct, and adding the definition of misconduct described above which is substantially the same in effect as the regulations regarding misconduct which were in effect prior to the enactment of P.L.2010, c.37, and subsequently repealed.

The bill includes a provision that nothing in the bill will be construed to interfere with the exercise of rights protected under the “National Labor Relations Act” or the “New Jersey Employer-Employee Relations Act.”

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) change the definition of misconduct to conduct which is improper, intentional, connected with the individual’s work, within the individual’s control, not a good faith error of judgment or discretion, and is either a deliberate refusal, without good cause, to comply with the employer’s lawful and reasonable rules made known to the employee or a deliberate disregard of standards of behavior the employer has a reasonable right to expect, including reasonable safety standards and reasonable standards for a workplace free of drug and substance abuse;

(2) to amend the standard for sustaining disqualification of benefits by misconduct so that the burden of proof is upon the employer, who shall, prior to a determination by the department of misconduct, provide written documentation demonstrating that the employee’s actions constitute misconduct or gross misconduct; and

(3) to include a provision that nothing in the bill will be construed to interfere with the exercise of rights protected under the “National Labor Relations Act” or the “New Jersey Employer-Employee Relations Act”.

The amendments make this bill identical to Assembly Bill No. 3871 (1R) of the 2018-2019 session.



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Newark, N.J.

Governor Murphy Takes Action on Legislation

08/24/2018

TRENTON - Today, Governor Phil Murphy signed the following bills into law:

A542 (Mazzeo, Lagana, Andrzejczak, Zwicker, Land, Benson, Downey/Ruiz, Bateman) - Requires certain schools to maintain supply of opioid antidotes and permits emergency administration of opioid antidote by school nurse or trained employee.

A1675 (Dancer, Conaway, Caride, Space/Beach, Smith) - Authorizes prescribed burning in certain circumstances.

A2035 (McKeon, Schaer/Pou, Cruz-Perez) - Revises "New Jersey Residential Mortgage Lending Act."

A2401 (Wimberly, Mukherji, Reynolds-Jackson/Cunningham, Gill, Turner) - Authorizes issuance of Delta Sigma Theta license plates.

A3463 (Murphy, Downey, Houghtaling/Gopal, Cruz-Perez) - Requires district boards of election to report every two hours number of voters who have voted at each precinct; authorizes challengers to request reported count.

A3628 (Greenwald, Moriarty, Murphy/Weinberg, Diegnan) - Establishes New Jersey Civic Information Consortium.

[Copy of Statement on A3628](#)

A3871 (Chiaravalloti, Egan/Diegnan, Cruz-Perez) - Concerns disqualification from unemployment benefits for misconduct.

A3904 (McKeon, Jasey, Schepisi/Cardinale, Stack) - "Tommy's Law"; requires NJT to take certain action and adopt policies concerning person injured or killed in incidents involving NJT motorbuses and rail or light rail vehicles.

A4120 (Pintor Marin, Tucker, DeAngelo/Rice, Ruiz) - Authorizes special assessments and bond issuance to replace lead-contaminated water service lines.

A4208 (Jasey, Lopez, Sumter/Rice) - Establishes "New Jersey Complete Count Commission."

A4249 (Wimberly, Pintor Marin/Ruiz, Vitale) - Expands per adjusted admission charge on hospitals to create supplemental funding pool for State's graduate medical education subsidy; appropriates \$24,285,714.

A4259 (Pintor Marin, Calabrese/Sarlo, Ruiz) - Restructures tickets sales law.

[Copy of Statement on A4259](#)

AJR137 (Pinkin/Greenstein) - Designates month of July of each year as "Smart Irrigation Month."

S2145 (Scutari, Sweeney/DeAngelo, Downey, Mukherji) - Concerns attorney fees for workers' compensation

awards.

SJR14 (Pou, Ruiz/Chaparro, Lopez, Jimenez) - Designates September 20th of each year as Hispanic Journalist Pride Day.

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Governor Phil Murphy

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