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P.L. 2005, CHAPTER 103, *approved June 27, 2005*
Senate, No. 2264 (*First Reprint*)

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

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26 be rescinded by the employer voluntarily or as a result of mediation or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

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

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:

¹ Senate SLA committee amendments adopted May 23, 2005.

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

4 (c) If it is found that the individual has failed, without good cause,
5 either to apply for available, suitable work when so directed by the
6 employment office or the director or to accept suitable work when it
7 is offered, or to return to the individual's customary self-employment
8 (if any) when so directed by the director. The disqualification shall
9 continue for the week in which the failure occurred and for the three
10 weeks which immediately follow that week (in addition to the waiting
11 period), as determined:

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

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

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

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

41 ¹[(1) (i)] (a)¹ The individual is not participating in or financing or
42 directly interested in the labor dispute which caused the stoppage of
43 work; and

44 [(2)] ¹[(ii)] (b)¹ The individual does not belong to a grade or
45 class of workers of which, immediately before the commencement of
46 the stoppage, there were members employed at the premises at which

1 the stoppage occurs, any of whom are participating in or financing or
2 directly interested in the dispute; provided that if in any case in which
3 ~~[(1)] ¹[(i)] a¹ or [(2)] ¹[(ii)] (b)¹~~ above applies, separate branches
4 of work which are commonly conducted as separate businesses in
5 separate premises are conducted in separate departments of the same
6 premises, each department shall, for the purpose of this subsection, be
7 deemed to be a separate factory, establishment, or other premises ¹[
8 ~~or]~~.¹

9 ~~(2) ¹[The]~~ For any claim for a period of unemployment
10 commencing on or after December 1, 2004, no disqualification under
11 this subsection (d) shall apply if it is shown that the¹ individual has
12 been prevented from working by the employer, even though:

13 ¹~~[(i) the]~~ (a) The¹ individual's recognized or certified majority
14 representative has directed the employees in the individual's collective
15 bargaining unit to work under the preexisting terms and conditions of
16 employment; and

17 ¹~~[(ii) the]~~ (b) The¹ employees had not engaged in a strike
18 immediately before being prevented from working.

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

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

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

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

1 an individual from any fund created or established under this chapter.

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

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

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

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

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

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

47 For the purposes of this subsection (j), the individual shall be

1 treated as being a victim of domestic violence if the individual provides
2 one or more of the following:

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

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

6 (3) Documentation that the perpetrator of the domestic violence has
7 been convicted of one or more of the offenses enumerated in section
8 3 of P.L.1991, c.261 (C.2C:25-19);

9 (4) Medical documentation of the domestic violence;

10 (5) Certification from a certified Domestic Violence Specialist or
11 the director of a designated domestic violence agency that the
12 individual is a victim of domestic violence; or

13 (6) Other documentation or certification of the domestic violence
14 provided by a social worker, member of the clergy, shelter worker or
15 other professional who has assisted the individual in dealing with the
16 domestic violence.

17 For the purposes of this subsection (j):

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

28 (cf. 1999, c.391, s.1)

29

30 2. This act shall take effect on the 60th day after enactment.

31

32

33

34

35 _____
36 Permits unemployment benefits for workers "locked-out" by their
employers.

SENATE, No. 2264

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED JANUARY 31, 2005

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

SYNOPSIS

Concerns unemployment compensation for workers who are "locked-out" of employment.

CURRENT VERSION OF TEXT

As introduced.



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

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

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

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

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

9 (1) In determining whether or not any work is suitable for an
10 individual, consideration shall be given to the degree of risk involved
11 to health, safety, and morals, the individual's physical fitness and prior
12 training, experience and prior earnings, the individual's length of
13 unemployment and prospects for securing local work in the individual's
14 customary occupation, and the distance of the available work from the
15 individual's residence. In the case of work in the production and
16 harvesting of agricultural crops, the work shall be deemed to be
17 suitable without regard to the distance of the available work from the
18 individual's residence if all costs of transportation are provided to the
19 individual and the terms and conditions of hire are as favorable or
20 more favorable to the individual as the terms and conditions of the
21 individual's base year employment.

22 (2) Notwithstanding any other provisions of this chapter, no work
23 shall be deemed suitable and benefits shall not be denied under this
24 chapter to any otherwise eligible individual for refusing to accept new
25 work under any of the following conditions: (a) if the position offered
26 is vacant due directly to a strike, lockout, or other labor dispute;
27 (b) if the remuneration, hours, or other conditions of the work offered
28 are substantially less favorable to the individual than those prevailing
29 for similar work in the locality; (c) if as a condition of being employed
30 the individual would be required to join a company union or to resign
31 from or refrain from joining any bona fide labor organization.

32 (d) If it is found that this unemployment is due to a stoppage of
33 work which exists because of a labor dispute at the factory,
34 establishment or other premises at which the individual is or was last
35 employed. No disqualification under this subsection shall apply if it is
36 shown that:

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

39 ~~[(2)]~~ (ii) The individual does not belong to a grade or class of
40 workers of which, immediately before the commencement of the
41 stoppage, there were members employed at the premises at which the
42 stoppage occurs, any of whom are participating in or financing or
43 directly interested in the dispute; provided that if in any case in which
44 ~~[(1)]~~ (i) or ~~[(2)]~~ (ii) above applies, separate branches of work which
45 are commonly conducted as separate businesses in separate premises
46 are conducted in separate departments of the same premises, each

1 department shall, for the purpose of this subsection, be deemed to be
2 a separate factory, establishment, or other premises; or

3 (2) The individual has been prevented from working by the
4 employer, even though:

5 (i) the individual's recognized or certified majority representative
6 has directed the employees in the individual's collective bargaining unit
7 to work under the preexisting terms and conditions of employment;
8 and

9 (ii) the employees had not engaged in a strike immediately before
10 being prevented from working.

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

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

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

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

40 (h) (1) Notwithstanding any other provisions of this chapter
41 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be denied
42 benefits for any week because the individual is in training approved
43 under section 236(a)(1) of the Trade Act of 1974, Pub.L.93-618, 19
44 U.S.C.s.2296, nor shall the individual be denied benefits by reason of
45 leaving work to enter this training, provided the work left is not
46 suitable employment, or because of the application to any week in

1 training of provisions in this chapter (R.S.43:21-1 et seq.), or any
2 applicable federal unemployment compensation law, relating to
3 availability for work, active search for work, or refusal to accept
4 work.

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

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

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

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

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

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

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

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

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

1 (4) Medical documentation of the domestic violence;

2 (5) Certification from a certified Domestic Violence Specialist or
3 the director of a designated domestic violence agency that the
4 individual is a victim of domestic violence; or

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

9 For the purposes of this subsection (j):

10 "Certified Domestic Violence Specialist" means a person who has
11 fulfilled the requirements of certification as a Domestic Violence
12 Specialist established by the New Jersey Association of Domestic
13 Violence Professionals; and "designated domestic violence agency"
14 means a county-wide organization with a primary purpose to provide
15 services to victims of domestic violence, and which provides services
16 that conform to the core domestic violence services profile as defined
17 by the Division of Youth and Family Services in the Department of
18 Human Services and is under contract with the division for the express
19 purpose of providing such services.

20 (cf. 1999, c.391, s.1)

21

22 2. This act shall take effect on the 60th day after enactment.

23

24

25

STATEMENT

26

27 This bill provides that employees may not be denied unemployment
28 compensation benefits because they have been prevented from working
29 by their employer, or "locked out" of employment, if the employees
30 were not on strike immediately prior to the lockout and are directed
31 by their union leadership to work under the preexisting terms and
32 conditions of employment. The "unemployment compensation law"
33 (N.J.S.A.43:21-1 et seq.) currently denies benefits to workers involved
34 in a labor dispute whether they are locked out or they are on strike.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 2264

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 23, 2005

The Senate Labor Committee reports favorably and with committee amendments Senate Bill No. 2264.

As amended by the committee, this bill amends R.S.43:21-5 to provide that, for any period of unemployment commencing on or after December 1, 2004, employees may not be denied unemployment benefits because they have been prevented from working, or "locked out," by their employer, if the employees were not on strike immediately prior to the lockout and are directed by their recognized union leadership to work under the preexisting terms and conditions of employment.

Under the current provisions of the unemployment law, unemployment benefits may be denied to workers involved in a labor dispute whether they are locked out or they are on strike. This bill would not change the current provisions of the law regarding the disqualification of strikers from receiving unemployment benefits.

ASSEMBLY, No. 3812

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED FEBRUARY 14, 2005

Sponsored by:

**Assemblyman JOHN S. WISNIEWSKI
District 19 (Middlesex)**

Co-Sponsored by:

**Assemblymen S.Kean, Cryan, Assemblywoman Weinberg and
Assemblyman Johnson**

SYNOPSIS

Permits unemployment benefits for workers "locked-out" by their employers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/17/2005)

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

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
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13 government, and has earned in employment at least six times the
14 individual's weekly benefit rate, as determined in each case. This
15 subsection shall apply to any individual seeking unemployment benefits
16 on the basis of employment in the production and harvesting of
17 agricultural crops, including any individual who was employed in the
18 production and harvesting of agricultural crops on a contract basis and
19 who has refused an offer of continuing work with that employer
20 following the completion of the minimum period of work required to
21 fulfill the contract.

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

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

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

43 (c) If it is found that the individual has failed, without good cause,

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 either to apply for available, suitable work when so directed by the
2 employment office or the director or to accept suitable work when it
3 is offered, or to return to the individual's customary self-employment
4 (if any) when so directed by the director. The disqualification shall
5 continue for the week in which the failure occurred and for the three
6 weeks which immediately follow that week (in addition to the waiting
7 period), as determined:

8 (1) In determining whether or not any work is suitable for an
9 individual, consideration shall be given to the degree of risk involved
10 to health, safety, and morals, the individual's physical fitness and prior
11 training, experience and prior earnings, the individual's length of
12 unemployment and prospects for securing local work in the individual's
13 customary occupation, and the distance of the available work from the
14 individual's residence. In the case of work in the production and
15 harvesting of agricultural crops, the work shall be deemed to be
16 suitable without regard to the distance of the available work from the
17 individual's residence if all costs of transportation are provided to the
18 individual and the terms and conditions of hire are as favorable or
19 more favorable to the individual as the terms and conditions of the
20 individual's base year employment.

21 (2) Notwithstanding any other provisions of this chapter, no work
22 shall be deemed suitable and benefits shall not be denied under this
23 chapter to any otherwise eligible individual for refusing to accept new
24 work under any of the following conditions: (a) if the position offered
25 is vacant due directly to a strike, lockout, or other labor dispute; (b)
26 if the remuneration, hours, or other conditions of the work offered are
27 substantially less favorable to the individual than those prevailing for
28 similar work in the locality; (c) if as a condition of being employed the
29 individual would be required to join a company union or to resign from
30 or refrain from joining any bona fide labor organization.

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

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

37 [(1)] (a) The individual is not participating in or financing or
38 directly interested in the labor dispute which caused the stoppage of
39 work; and

40 [(2)] (b) The individual does not belong to a grade or class of
41 workers of which, immediately before the commencement of the
42 stoppage, there were members employed at the premises at which the
43 stoppage occurs, any of whom are participating in or financing or
44 directly interested in the dispute; provided that if in any case in which
45 [(1)] (a) or [(2)] (b) above applies, separate branches of work which
46 are commonly conducted as separate businesses in separate premises

1 are conducted in separate departments of the same premises, each
2 department shall, for the purpose of this subsection, be deemed to be
3 a separate factory, establishment, or other premises.

4 (2) For any claim for a period of unemployment commencing on or
5 after December 1, 2004, no disqualification under this subsection (d)
6 shall apply if it is shown that the individual has been prevented from
7 working by the employer, even though:

8 (a) The individual's recognized or certified majority representative
9 has directed the employees in the individual's collective bargaining unit
10 to work under the preexisting terms and conditions of employment;
11 and

12 (b) The employees had not engaged in a strike immediately before
13 being prevented from working.

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

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

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

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

43 (h) (1) Notwithstanding any other provisions of this chapter
44 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be denied
45 benefits for any week because the individual is in training approved
46 under section 236(a)(1) of the Trade Act of 1974, Pub.L.93-618, 19

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

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

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

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

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

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

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

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

- 1 (2) A police record documenting the domestic violence;
2 (3) Documentation that the perpetrator of the domestic violence
3 has been convicted of one or more of the offenses enumerated in
4 section 3 of P.L.1991, c.261 (C.2C:25-19);
5 (4) Medical documentation of the domestic violence;
6 (5) Certification from a certified Domestic Violence Specialist or
7 the director of a designated domestic violence agency that the
8 individual is a victim of domestic violence; or
9 (6) Other documentation or certification of the domestic violence
10 provided by a social worker, member of the clergy, shelter worker or
11 other professional who has assisted the individual in dealing with the
12 domestic violence.

13 For the purposes of this subsection (j):

14 "Certified Domestic Violence Specialist" means a person who has
15 fulfilled the requirements of certification as a Domestic Violence
16 Specialist established by the New Jersey Association of Domestic
17 Violence Professionals; and "designated domestic violence agency"
18 means a county-wide organization with a primary purpose to provide
19 services to victims of domestic violence, and which provides services
20 that conform to the core domestic violence services profile as defined
21 by the Division of Youth and Family Services in the Department of
22 Human Services and is under contract with the division for the express
23 purpose of providing such services.

24 (cf. P.L.1999, c.391, s.1)

25

26 2. This act shall take effect on the 60th day after enactment.

27

28

29

STATEMENT

30

31 This bill amends R.S.43:21-5 to provide that, for any period of
32 unemployment commencing on or after December 1, 2004, employees
33 may not be denied unemployment benefits because they have been
34 prevented from working, or "locked out," by their employer, if the
35 employees were not on strike immediately prior to the lockout and are
36 directed by their recognized union leadership to work under the
37 preexisting terms and conditions of employment.

38 Under the current provisions of the unemployment law,
39 unemployment benefits may be denied to workers involved in a labor
40 dispute whether they are locked out or they are on strike. This bill
41 would not change the current provisions of the law regarding the
42 disqualification of strikers from receiving unemployment benefits.

ASSEMBLY, No. 4020

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED MAY 5, 2005

Sponsored by:

Assemblyman DOUGLAS H. FISHER

District 3 (Salem, Cumberland and Gloucester)

SYNOPSIS

Concerns unemployment compensation for workers who are "locked-out" of employment.

CURRENT VERSION OF TEXT

As introduced.



A4020 FISHER

2

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

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

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

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

43 (c) If it is found that the individual has failed, without good cause,

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

Matter underlined thus is new matter.

1 either to apply for available, suitable work when so directed by the
2 employment office or the director or to accept suitable work when it
3 is offered, or to return to the individual's customary self-employment
4 (if any) when so directed by the director. The disqualification shall
5 continue for the week in which the failure occurred and for the three
6 weeks which immediately follow that week (in addition to the waiting
7 period), as determined:

8 (1) In determining whether or not any work is suitable for an
9 individual, consideration shall be given to the degree of risk involved
10 to health, safety, and morals, the individual's physical fitness and prior
11 training, experience and prior earnings, the individual's length of
12 unemployment and prospects for securing local work in the individual's
13 customary occupation, and the distance of the available work from the
14 individual's residence. In the case of work in the production and
15 harvesting of agricultural crops, the work shall be deemed to be
16 suitable without regard to the distance of the available work from the
17 individual's residence if all costs of transportation are provided to the
18 individual and the terms and conditions of hire are as favorable or
19 more favorable to the individual as the terms and conditions of the
20 individual's base year employment.

21 (2) Notwithstanding any other provisions of this chapter, no work
22 shall be deemed suitable and benefits shall not be denied under this
23 chapter to any otherwise eligible individual for refusing to accept new
24 work under any of the following conditions: (a) if the position offered
25 is vacant due directly to a strike, lockout, or other labor dispute;
26 (b) if the remuneration, hours, or other conditions of the work offered
27 are substantially less favorable to the individual than those prevailing
28 for similar work in the locality; (c) if as a condition of being employed
29 the individual would be required to join a company union or to resign
30 from or refrain from joining any bona fide labor organization.

31 (d) If it is found that this unemployment is due to a stoppage of
32 work which exists because of a labor dispute at the factory,
33 establishment or other premises at which the individual is or was last
34 employed. No disqualification under this subsection shall apply if it is
35 shown that:

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

38 [(2)] (ii) The individual does not belong to a grade or class of
39 workers of which, immediately before the commencement of the
40 stoppage, there were members employed at the premises at which the
41 stoppage occurs, any of whom are participating in or financing or
42 directly interested in the dispute; provided that if in any case in which
43 [(1)] (i) or [(2)] (ii) above applies, separate branches of work which
44 are commonly conducted as separate businesses in separate premises
45 are conducted in separate departments of the same premises, each
46 department shall, for the purpose of this subsection, be deemed to be

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1 a separate factory, establishment, or other premises; or

2 (2) The individual has been prevented from working by the
3 employer, even though:

4 (i) the individual's recognized or certified majority representative
5 has directed the employees in the individual's collective bargaining unit
6 to work under the preexisting terms and conditions of employment;
7 and

8 (ii) the employees had not engaged in a strike immediately before
9 being prevented from working.

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

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

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

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

39 (h) (1) Notwithstanding any other provisions of this chapter
40 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be denied
41 benefits for any week because the individual is in training approved
42 under section 236(a)(1) of the Trade Act of 1974, Pub.L.93-618, 19
43 U.S.C.s.2296, nor shall the individual be denied benefits by reason of
44 leaving work to enter this training, provided the work left is not
45 suitable employment, or because of the application to any week in
46 training of provisions in this chapter (R.S.43:21-1 et seq.), or any

1 applicable federal unemployment compensation law, relating to
2 availability for work, active search for work, or refusal to accept
3 work.

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

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

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

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

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

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

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

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

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

- 1 (4) Medical documentation of the domestic violence;
2 (5) Certification from a certified Domestic Violence Specialist or
3 the director of a designated domestic violence agency that the
4 individual is a victim of domestic violence; or
5 (6) Other documentation or certification of the domestic violence
6 provided by a social worker, member of the clergy, shelter worker or
7 other professional who has assisted the individual in dealing with the
8 domestic violence.

9 For the purposes of this subsection (j):

10 "Certified Domestic Violence Specialist" means a person who has
11 fulfilled the requirements of certification as a Domestic Violence
12 Specialist established by the New Jersey Association of Domestic
13 Violence Professionals; and "designated domestic violence agency"
14 means a county-wide organization with a primary purpose to provide
15 services to victims of domestic violence, and which provides services
16 that conform to the core domestic violence services profile as defined
17 by the Division of Youth and Family Services in the Department of
18 Human Services and is under contract with the division for the express
19 purpose of providing such services.

20 (cf. 1999, c.391, s.1)

21

22 2. This act shall take effect on the 60th day after enactment.

23

24

25

STATEMENT

26

27 This bill provides that employees may not be denied unemployment
28 compensation benefits because they have been prevented from working
29 by their employer, or "locked out" of employment, if the employees
30 were not on strike immediately prior to the lockout and are directed
31 by their union leadership to work under the preexisting terms and
32 conditions of employment. The "unemployment compensation law"
33 (N.J.S.A.43:21-1 et seq.) currently denies benefits to workers involved
34 in a labor dispute whether they are locked out or they are on strike.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3812 and 4020

STATE OF NEW JERSEY

DATED: JUNE 13, 2005

The Assembly Labor Committee reports favorably this Assembly committee substitute for A-3812 and A-4020.

This committee substitute amends R.S.43:21-5 to provide that, for any period of unemployment commencing on or after December 1, 2004, employees may not be denied unemployment benefits because they have been prevented from working, or "locked out," by their employer, if the employees were not on strike immediately prior to the lockout and are directed by their recognized union leadership to work under the preexisting terms and conditions of employment.

Under the current provisions of the unemployment law, unemployment benefits may be denied to workers involved in a labor dispute whether they are locked out or on strike. This bill would not change the current provisions of the law regarding the disqualification of strikers from receiving unemployment benefits.