

**43:21-4**  
**LEGISLATIVE HISTORY CHECKLIST**

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**LAWS OF:** 2020                    **CHAPTER:** 122

**NJSA:** 43:21-4 (Concerns eligibility of education employees for unemployment.)

**BILL NO:** S2852                    (Substituted for A4613)

**SPONSOR(S)** Stephen M. Sweeney and others

**DATE INTRODUCED:** 8/27/2020

**COMMITTEE:**                    **ASSEMBLY:** Labor

**SENATE:** Education

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:**                    **ASSEMBLY:** 10/29/2020

**SENATE:** 9/24/2020

**DATE OF APPROVAL:** 11/10/2020

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (Introduced bill enacted) Yes

**S2852**

**INTRODUCED BILL (INCLUDES SPONSOR'S STATEMENT):** Yes

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** Yes

**SENATE:** Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**A4613**

**INTRODUCED BILL (INCLUDES SPONSOR'S STATEMENT):** Yes

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** Yes

**SENATE:** No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

RWH/CL

P.L. 2020, CHAPTER 122, *approved November 10, 2020*

Senate, No. 2852

1 AN ACT concerning eligibility of certain education employees for  
2 unemployment benefits and amending R.S.43:21-4.

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

6  
7 1. R.S.43:21-4 is amended to read as follows:

8 43:21-4. Benefit eligibility conditions. An unemployed  
9 individual shall be eligible to receive benefits with respect to any  
10 week eligible only if:

11 (a) The individual has filed a claim at an unemployment  
12 insurance claims office and thereafter continues to report at an  
13 employment service office or unemployment insurance claims  
14 office, as directed by the division in accordance with such  
15 regulations as the division may prescribe, except that the division  
16 may, by regulation, waive or alter either or both of the requirements  
17 of this subsection as to individuals attached to regular jobs, and as  
18 to such other types of cases or situations with respect to which the  
19 division finds that compliance with such requirements would be  
20 oppressive, or would be inconsistent with the purpose of this act;  
21 provided that no such regulation shall conflict with subsection (a) of  
22 R.S.43:21-3.

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

25 (c) (1) The individual is able to work, and is available for work,  
26 and has demonstrated to be actively seeking work, except as  
27 hereinafter provided in this subsection or in subsection (f) of this  
28 section.

29 (2) The director may modify the requirement of actively seeking  
30 work if such modification of this requirement is warranted by  
31 economic conditions.

32 (3) No individual, who is otherwise eligible, shall be deemed  
33 ineligible, or unavailable for work, because the individual is on  
34 vacation, without pay, during said week, if said vacation is not the  
35 result of the individual's own action as distinguished from any  
36 collective action of a collective bargaining agent or other action  
37 beyond the individual's control.

38 (4) (A) Subject to such limitations and conditions as the  
39 division may prescribe, an individual, who is otherwise eligible,  
40 shall not be deemed unavailable for work or ineligible because the  
41 individual is attending a training program approved for the  
42 individual by the division to enhance the individual's employment

**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 opportunities or because the individual failed or refused to accept  
2 work while attending such program.

3 (B) For the purpose of this paragraph (4), any training program  
4 shall be regarded as approved by the division for the individual if  
5 the program and the individual meet the following requirements:

6 (i) The training is for a labor demand occupation and is likely to  
7 enhance the individual's marketable skills and earning power,  
8 except that the training may be for an occupation other than a labor  
9 demand occupation if the individual is receiving short-time benefits  
10 pursuant to the provisions of P.L.2011, c.154 (C.43:21-20.3 et al.)  
11 and the training is necessary to prevent a likely loss of jobs;

12 (ii) The training is provided by a competent and reliable private  
13 or public entity approved by the Commissioner of Labor and  
14 Workforce Development pursuant to the provisions of section 8 of  
15 the "1992 New Jersey Employment and Workforce Development  
16 Act," P.L.1992, c.43 (C.34:15D-8);

17 (iii) The individual can reasonably be expected to complete the  
18 program, either during or after the period of benefits;

19 (iv) The training does not include on the job training or other  
20 training under which the individual is paid by an employer for work  
21 performed by the individual during the time that the individual  
22 receives benefits; and

23 (v) The individual enrolls in vocational training, remedial  
24 education or a combination of both on a full-time basis, except that  
25 the training or education may be on a part-time basis if the  
26 individual is receiving short-time benefits pursuant to the provisions  
27 of P.L.2011, c.154 (C.43:21-20.3 et al.).

28 (C) If the requirements of subparagraph (B) of this paragraph (4)  
29 are met, the division shall not withhold approval of the training  
30 program for the individual for any of the following reasons:

31 (i) The training includes remedial basic skills education  
32 necessary for the individual to successfully complete the vocational  
33 component of the training;

34 (ii) The training is provided in connection with a program under  
35 which the individual may obtain a college degree, including a post-  
36 graduate degree;

37 (iii) The length of the training period under the program; or

38 (iv) The lack of a prior guarantee of employment upon  
39 completion of the training.

40 (D) For the purpose of this paragraph (4), "labor demand  
41 occupation" means an occupation for which there is or is likely to  
42 be an excess of demand over supply for adequately trained workers,  
43 including, but not limited to, an occupation designated as a labor  
44 demand occupation by the Center for Occupational Employment  
45 Information pursuant to the provisions of subsection d. of section  
46 27 of P.L.2005, c.354 (C.34:1A-86).

47 (5) An unemployed individual, who is otherwise eligible, shall  
48 not be deemed unavailable for work or ineligible solely by reason of

1 the individual's attendance before a court in response to a summons  
2 for service on a jury.

3 (6) An unemployed individual, who is otherwise eligible, shall  
4 not be deemed unavailable for work or ineligible solely by reason of  
5 the individual's attendance at the funeral of an immediate family  
6 member, provided that the duration of the attendance does not  
7 extend beyond a two-day period.

8 For purposes of this paragraph, "immediate family member"  
9 includes any of the following individuals: father, mother, mother-  
10 in-law, father-in-law, grandmother, grandfather, grandchild, spouse,  
11 child, child placed by the Division of Youth and Family Services in  
12 the Department of Children and Families, sister or brother of the  
13 unemployed individual and any relatives of the unemployed  
14 individual residing in the unemployed individual's household.

15 (7) No individual, who is otherwise eligible, shall be deemed  
16 ineligible or unavailable for work with respect to any week because,  
17 during that week, the individual fails or refuses to accept work  
18 while the individual is participating on a full-time basis in self-  
19 employment assistance activities authorized by the division,  
20 whether or not the individual is receiving a self-employment  
21 allowance during that week.

22 (8) Any individual who is determined to be likely to exhaust  
23 regular benefits and need reemployment services based on  
24 information obtained by the worker profiling system shall not be  
25 eligible to receive benefits if the individual fails to participate in  
26 available reemployment services to which the individual is referred  
27 by the division or in similar services, unless the division determines  
28 that:

29 (A) The individual has completed the reemployment services; or  
30 (B) There is justifiable cause for the failure to participate, which  
31 shall include participation in employment and training, self-  
32 employment assistance activities or other activities authorized by  
33 the division to assist reemployment or enhance the marketable skills  
34 and earning power of the individual and which shall include any  
35 other circumstance indicated pursuant to this section in which an  
36 individual is not required to be available for and actively seeking  
37 work to receive benefits.

38 (9) An unemployed individual, who is otherwise eligible, shall  
39 not be deemed unavailable for work or ineligible solely by reason of  
40 the individual's work as a board worker for a county board of  
41 elections on an election day.

42 (10) An individual who is employed by a shared work employer  
43 and is otherwise eligible for benefits shall not be deemed ineligible  
44 for short-time benefits because the individual is unavailable for  
45 work with employers other than the shared work employer, so long  
46 as:

1 (A) The individual is able to work and is available to work the  
2 individual's normal full-time hours for the shared work employer;  
3 or

4 (B) The individual is attending a training program which is in  
5 compliance with the provisions of paragraph (4) of subsection (c) of  
6 this section and the agreements and certifications required pursuant  
7 to the provisions of section 2 of P.L.2011, c.154 (C.43:21-20.4).

8 (d) With respect to any benefit year commencing before January  
9 1, 2002, the individual has been totally or partially unemployed for  
10 a waiting period of one week in the benefit year which includes that  
11 week. When benefits become payable with respect to the third  
12 consecutive week next following the waiting period, the individual  
13 shall be eligible to receive benefits as appropriate with respect to  
14 the waiting period. No week shall be counted as a week of  
15 unemployment for the purposes of this subsection:

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

20 (2) If it has constituted a waiting period week under the  
21 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25  
22 et al.);

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

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

27 The waiting period provided by this subsection shall not apply to  
28 benefit years commencing on or after January 1, 2002. An  
29 individual whose total benefit amount was reduced by the  
30 application of the waiting period to a claim which occurred on or  
31 after January 1, 2002 and before the effective date of P.L.2002,  
32 c.13, shall be permitted to file a claim for the additional benefits  
33 attributable to the waiting period in the form and manner prescribed  
34 by the division, but not later than the 180th day following the  
35 effective date of P.L.2002, c.13 unless the division determines that  
36 there is good cause for a later filing.

37 (e) (1) (Deleted by amendment, P.L.2001, c.17).

38 (2) (Deleted by amendment, P.L.2008, c.17).

39 (3) (Deleted by amendment, P.L.2008, c.17).

40 (4) With respect to benefit years commencing on or after  
41 January 7, 2001, except as otherwise provided in paragraph (5) of  
42 this subsection, the individual has, during his base year as defined  
43 in subsection (c) of R.S.43:21-19:

44 (A) Established at least 20 base weeks as defined in paragraphs  
45 (2) and (3) of subsection (t) of R.S.43:21-19; or

46 (B) If the individual has not met the requirements of  
47 subparagraph (A) of this paragraph (4), earned remuneration not  
48 less than an amount 1,000 times the minimum wage in effect

1 pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October  
2 1 of the calendar year preceding the calendar year in which the  
3 benefit year commences, which amount shall be adjusted to the next  
4 higher multiple of \$100 if not already a multiple thereof.

5 (5) With respect to benefit years commencing on or after  
6 January 7, 2001, notwithstanding the provisions of paragraph (4) of  
7 this subsection, an unemployed individual claiming benefits on the  
8 basis of service performed in the production and harvesting of  
9 agricultural crops shall, subject to the limitations of subsection (i)  
10 of R.S.43:21-19, be eligible to receive benefits if during his base  
11 year, as defined in subsection (c) of R.S.43:21-19, the individual:

12 (A) Has established at least 20 base weeks as defined in  
13 paragraphs (2) and (3) of subsection (t) of R.S.43:21-19; or

14 (B) Has earned remuneration not less than an amount 1,000  
15 times the minimum wage in effect pursuant to section 5 of  
16 P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year  
17 preceding the calendar year in which the benefit year commences,  
18 which amount shall be adjusted to the next higher multiple of \$100  
19 if not already a multiple thereof; or

20 (C) Has performed at least 770 hours of service in the  
21 production and harvesting of agricultural crops.

22 (6) The individual applying for benefits in any successive  
23 benefit year has earned at least six times his previous weekly  
24 benefit amount and has had four weeks of employment since the  
25 beginning of the immediately preceding benefit year. This  
26 provision shall be in addition to the earnings requirements specified  
27 in paragraph (4) or (5) of this subsection, as applicable.

28 (f) (1) The individual has suffered any accident or sickness not  
29 compensable under the workers' compensation law, R.S.34:15-1 et  
30 seq. and resulting in the individual's total disability to perform any  
31 work for remuneration, and would be eligible to receive benefits  
32 under this chapter (R.S.43:21-1 et seq.) (without regard to the  
33 maximum amount of benefits payable during any benefit year)  
34 except for the inability to work and has furnished notice and proof  
35 of claim to the division, in accordance with its rules and  
36 regulations, and payment is not precluded by the provisions of  
37 R.S.43:21-3(d); provided, however, that benefits paid under this  
38 subsection (f) shall be computed on the basis of only those base  
39 year wages earned by the claimant as a "covered individual," as  
40 defined in subsection (b) of section 3 of P.L.1948, c.110 (C.43:21-  
41 27); provided further that no benefits shall be payable under this  
42 subsection to any individual:

43 (A) For any period during which such individual is not under the  
44 care of a legally licensed physician, dentist, optometrist, podiatrist,  
45 practicing psychologist, advanced practice nurse, or chiropractor,  
46 who, when requested by the division, shall certify within the scope  
47 of the practitioner's practice, the disability of the individual, the

1 probable duration thereof, and, where applicable, the medical facts  
2 within the practitioner's knowledge;

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

4 (C) For any period of disability due to willfully or intentionally  
5 self-inflicted injury, or to injuries sustained in the perpetration by  
6 the individual of a crime of the first, second or third degree;

7 (D) For any week with respect to which or a part of which the  
8 individual has received or is seeking benefits under any  
9 unemployment compensation or disability benefits law of any other  
10 state or of the United States; provided that if the appropriate agency  
11 of such other state or the United States finally determines that the  
12 individual is not entitled to such benefits, this disqualification shall  
13 not apply;

14 (E) For any week with respect to which or part of which the  
15 individual has received or is seeking disability benefits under the  
16 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25  
17 et al.);

18 (F) For any period of disability commencing while such  
19 individual is a "covered individual," as defined in subsection (b) of  
20 section 3 of the "Temporary Disability Benefits Law," P.L.1948,  
21 c.110 (C.43:21-27).

22 (2) The individual is taking family temporary disability leave to  
23 provide care for a family member with a serious health condition or  
24 to be with a child during the first 12 months after the child's birth or  
25 placement of the child for adoption or as a foster child with the  
26 individual, and the individual would be eligible to receive benefits  
27 under R.S.43:21-1 et seq. (without regard to the maximum amount  
28 of benefits payable during any benefit year) except for the  
29 individual's unavailability for work while taking the family  
30 temporary disability leave, and the individual has furnished notice  
31 and proof of claim to the division, in accordance with its rules and  
32 regulations, and payment is not precluded by the provisions of  
33 R.S.43:21-3(d) provided, however, that benefits paid under this  
34 subsection (f) shall be computed on the basis of only those base  
35 year wages earned by the claimant as a "covered individual," as  
36 defined in subsection (b) of section 3 of P.L.1948, c.110 (C.43:21-  
37 27); provided further that no benefits shall be payable under this  
38 subsection to any individual:

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

46 (B) For any week with respect to which or part of which the  
47 individual has received or is seeking disability benefits for a



1 disability of the individual under the "Temporary Disability  
2 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.);

3 (C) For any period of family temporary disability leave  
4 commencing while the individual is a "covered individual," as  
5 defined in subsection (b) of section 3 of the "Temporary Disability  
6 Benefits Law," P.L.1948, c.110 (C.43:21-27); or

7 (D) For any period of family temporary disability leave for a  
8 serious health condition of a family member of the claimant during  
9 which the family member is not receiving inpatient care in a  
10 hospital, hospice, or residential medical care facility and is not  
11 subject to continuing medical treatment or continuing supervision  
12 by a health care provider, who, when requested by the division,  
13 shall certify within the scope of the provider's practice, the serious  
14 health condition of the family member, the probable duration  
15 thereof, and, where applicable, the medical facts within the  
16 provider's knowledge.

17 (3) Benefit payments under this subsection (f) shall be charged  
18 to and paid from the State disability benefits fund established by the  
19 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25  
20 et al.), and shall not be charged to any employer account in  
21 computing any employer's experience rate for contributions payable  
22 under this chapter.

23 (g) Benefits based on service in employment defined in  
24 subparagraphs (B) and (C) of R.S.43:21-19 (i)(1) shall be payable  
25 in the same amount and on the terms and subject to the same  
26 conditions as benefits payable on the basis of other service subject  
27 to the "unemployment compensation law"; except that,  
28 notwithstanding any other provisions of the "unemployment  
29 compensation law":

30 (1) With respect to service performed after December 31, 1977,  
31 in an instructional, research, or principal administrative capacity for  
32 an educational institution, benefits shall not be paid based on such  
33 services for any week of unemployment commencing during the  
34 period between two successive academic years, or during a similar  
35 period between two regular terms, whether or not successive, or  
36 during a period of paid sabbatical leave provided for in the  
37 individual's contract, to any individual if such individual performs  
38 such services in the first of such academic years (or terms) and if  
39 there is a contract or a reasonable assurance that such individual  
40 will perform services in any such capacity for any educational  
41 institution in the second of such academic years or terms;

42 (2) With respect to weeks of unemployment beginning after  
43 September 3, 1982, on the basis of service performed in any other  
44 capacity for an educational institution, benefits shall not be paid on  
45 the basis of such services to any individual for any week which  
46 commences during a period between two successive academic years  
47 or terms if such individual performs such services in the first of  
48 such academic years or terms and there is a reasonable assurance

1 that such individual will perform such services in the second of  
2 such academic years or terms, except that if benefits are denied to  
3 any individual under this paragraph (2) and the individual was not  
4 offered an opportunity to perform these services for the educational  
5 institution for the second of any academic years or terms, the  
6 individual shall be entitled to a retroactive payment of benefits for  
7 each week for which the individual filed a timely claim for benefits  
8 and for which benefits were denied solely by reason of this clause;

9 (3) With respect to those services described in paragraphs (1)  
10 and (2) above, benefits shall not be paid on the basis of such  
11 services to any individual for any week which commences during  
12 an established and customary vacation period or holiday recess if  
13 such individual performs such services in the period immediately  
14 before such vacation period or holiday recess, and there is a  
15 reasonable assurance that such individual will perform such  
16 services in the period immediately following such period or holiday  
17 recess;

18 (4) With respect to any services described in paragraphs (1) and  
19 (2) above, benefits shall not be paid as specified in paragraphs (1),  
20 (2), and (3) above to any individual who performed those services  
21 in an educational institution while in the employ of an educational  
22 service agency, and for this purpose the term "educational service  
23 agency" means a governmental agency or governmental entity  
24 which is established and operated exclusively for the purpose of  
25 providing those services to one or more educational institutions;

26 (5) [with respect to services performed after the effective date of  
27 P.L.2020, c.57, and only upon written notification from the United  
28 States Department of Labor that the amendatory language added to  
29 this section by that act conforms to the "Between and Within  
30 Terms" denial provisions of 26 U.S.C. s.3304, as used in this  
31 subsection:

32 "Established and customary vacation period or holiday recess"  
33 includes those breaks scheduled during fall, winter, and spring  
34 recesses when those vacation periods occur within a term or  
35 semester. "Established and customary vacation period or holiday  
36 recess" does not include the summer term or semester, unless, based  
37 on objective criteria including enrollment and staffing, the summer  
38 is not in fact a part of the academic year for a particular institution.

39 "Reasonable assurance" means a written, verbal, or implied  
40 agreement that the employee will perform services in the same  
41 capacity during the ensuing academic year or term as in the first  
42 academic year or term. A person shall not be deemed to be  
43 performing services "in the same capacity" unless those services are  
44 rendered under the same terms or conditions of employment in the  
45 ensuing year as in the first academic year or term.

46 An individual who is tenured or holds tenure track status is  
47 considered to have reasonable assurance, unless advised otherwise.  
48 For the purposes of this subsection, tenure track status means a

1 probationary faculty employee having an opportunity to be  
2 reviewed for tenure.

3 A person is presumed not to have reasonable assurance under an  
4 offer that is conditioned on enrollment, funding, program changes,  
5 or other circumstances under the control of the employer. It is the  
6 employer's burden to provide sufficient documentation to overcome  
7 this presumption. Reasonable assurance shall be determined on a  
8 case-by-case basis considering the totality of circumstances rather  
9 than on the existence of any one factor. For an individual to be  
10 regarded as having reasonable assurance of employment, the totality  
11 of circumstances must show that it is highly probable that there is a  
12 job available for the employee in the following academic year or  
13 term. If any contingencies in the employment offer are within the  
14 employer's control, the claimant shall not be regarded as having a  
15 reasonable assurance of employment. Contingencies within the  
16 employer's control include, but are not limited to, enrollment,  
17 funding, including appropriations and the allocation of funding,  
18 program changes, final course offering, and facility availability. **As**  
19 used in this subsection (g) in order for there to be a "reasonable  
20 assurance" all of the following requirements shall be met:

21 (A) The educational institution has made an offer of employment  
22 in the following academic year or term that is either written, oral, or  
23 implied;

24 (B) The offer of employment in the following academic year or  
25 term was made by an individual with actual authority to offer  
26 employment;

27 (C) The employment offered in the following academic year or  
28 term shall be in the same capacity;

29 (D) The economic conditions of the employment offered may not  
30 be considerably less in the following academic year or term than in  
31 the then current academic year or term. For the purpose of this  
32 paragraph, "considerably less" means that the claimant will earn  
33 less than 90 percent of the amount the claimant earned in the then  
34 current academic year or term;

35 (E) The offer of employment in the following academic year or  
36 term is not contingent upon a factor or factors that are within the  
37 educational institution's control, including but not limited to, course  
38 programming, decisions on how to allocate available funding, final  
39 course offerings, program changes, and facility availability; and

40 (F) Based on a totality of the circumstances, it is highly probable  
41 that there is a job available for the claimant in the following  
42 academic year or term. If a job offer contains a contingency,  
43 primary weight should be given to the contingent nature of the offer  
44 of employment. Contingencies that are not necessarily within the  
45 educational institution's control, such as funding, enrollment and  
46 seniority, may be taken into consideration but the existence of any  
47 one contingency should not determine whether it is highly probably

1 that there is a job available for the claimant in the following  
2 academic year or term.

3 (6) Determinations by the department whether claimants have a  
4 “reasonable assurance” shall be done on a case-by-case basis.

5 (7) Each educational institution shall provide the following to the  
6 department, in a form, including electronic form, prescribed by the  
7 commissioner, no less than 10 business days prior to the end of the  
8 academic year or term:

9 (A) A list of all employees who the educational institution has  
10 concluded do not have a reasonable assurance of employment in the  
11 following academic year or term, along with information prescribed  
12 by the commissioner regarding each such employee, which  
13 information shall include, but not be limited to, name and social  
14 security number; and

15 (B) For each employee that the educational institution maintains  
16 does have a reasonable assurance of employment in the following  
17 academic year or term, a statement explaining the manner in which  
18 the employee was given a reasonable assurance of employment, that  
19 is, whether it was in writing, oral, or implied, and what information  
20 about the offer, including contingencies, was communicated to the  
21 individual.

22 (8) The statement required under subparagraph (B) of paragraph  
23 (7) of this subsection (g) may be used by the department in its  
24 analysis under paragraphs (5) and (6) of this subsection (g), but it  
25 does not conclusively demonstrate that the claimant has a  
26 reasonable assurance of employment in the following academic year  
27 or term.

28 (9) Failure of an educational institution to provide the statement  
29 required under subparagraph (B) of paragraph (7) of this subsection  
30 (g) not less than 10 business days prior to the end of the academic  
31 year or term shall result in a rebuttable presumption that the  
32 claimant does not have a reasonable assurance of employment in the  
33 following academic year or term. This rebuttable presumption shall  
34 give rise to an inference that the claimant does not have a  
35 reasonable assurance of employment in the following academic year  
36 or term, but shall not conclusively demonstrate that the claimant  
37 does not have a reasonable assurance of employment in the  
38 following academic year or term.

39 (10) If any part of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_)(pending before the  
40 Legislature as this bill) is found to be in conflict with federal  
41 requirements that are a prescribed condition to the allocation of  
42 federal funds to the State or the eligibility of employers in this State  
43 for federal unemployment tax credits, the conflicting part of that act  
44 is inoperative solely to the extent of the conflict, and the finding or  
45 determination does not affect the operation of the remainder of this  
46 act. Rules adopted under this act shall meet federal requirements  
47 that are a necessary condition to the receipt of federal funds by the

1 State or the granting of federal unemployment tax credits to  
2 employers in this State.

3 (h) Benefits shall not be paid to any individual on the basis of  
4 any services, substantially all of which consist of participating in  
5 sports or athletic events or training or preparing to so participate,  
6 for any week which commences during the period between two  
7 successive sports seasons (or similar periods) if such individual  
8 performed such services in the first of such seasons (or similar  
9 periods) and there is a reasonable assurance that such individual  
10 will perform such services in the later of such seasons (or similar  
11 periods).

12 (i) (1) Benefits shall not be paid on the basis of services  
13 performed by an alien unless such alien is an individual who was  
14 lawfully admitted for permanent residence at the time the services  
15 were performed and was lawfully present for the purpose of  
16 performing the services or otherwise was permanently residing in  
17 the United States under color of law at the time the services were  
18 performed (including an alien who is lawfully present in the United  
19 States as a result of the application of the provisions of section  
20 212(d)(5) (8 U.S.C. s.1182 (d)(5)) of the Immigration and  
21 Nationality Act (8 U.S.C. s.1101 et seq.)); provided that any  
22 modifications of the provisions of section 3304(a)(14) of the  
23 Federal Unemployment Tax Act (26 U.S.C. s. 3304 (a) (14)) as  
24 provided by Pub.L.94-566, which specify other conditions or other  
25 effective dates than stated herein for the denial of benefits based on  
26 services performed by aliens and which modifications are required  
27 to be implemented under State law as a condition for full tax credit  
28 against the tax imposed by the Federal Unemployment Tax Act,  
29 shall be deemed applicable under the provisions of this section.

30 (2) Any data or information required of individuals applying for  
31 benefits to determine whether benefits are not payable to them  
32 because of their alien status shall be uniformly required from all  
33 applicants for benefits.

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

38 (j) Notwithstanding any other provision of this chapter, the  
39 director may, to the extent that it may be deemed efficient and  
40 economical, provide for consolidated administration by one or more  
41 representatives or deputies of claims made pursuant to subsection  
42 (f) of this section with those made pursuant to Article III (State  
43 plan) of the "Temporary Disability Benefits Law," P.L.1948, c.110  
44 (C.43:21-25 et al.).

45 (cf: P.L.2020, c.57, s.10)

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47 2. This act shall take effect immediately.

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STATEMENT

This bill provides that certain employees of educational institutions may not be denied unemployment insurance (UI) benefits when those employees are denied employment during a summer or holiday break without assurance of reinstatement after the break. The bill clarifies provisions of the UI law making an education institution employee eligible for UI benefits during a summer or holiday break when the employee is not given a reasonable assurance of equivalent work after the break by specifying that in order for there to be reasonable assurances:

1. An offer of employment for after the break is required to be made;
2. The offer of employment is required to be made by an individual with authority to offer employment;
3. The employment is required to be in the same capacity;
4. The economic conditions of the offer cannot be substantially less than in previous employment;
5. The offer of employment is required not to be contingent on factors within the institution's control; and
6. The agency is required to find based on the totality of the circumstances that it is highly probable a claimant will get a job after the break.

This bill requires educational institution employers to inform the Department of Labor of employees who they have determined do not have reasonable assurances or provide an explanation for those that they deem do have reasonable assurances 10 days prior to the end of the academic term. If an employer fails to meet the 10 day deadline, the claimant is entitled to a rebuttable presumption that they qualify for a benefit.

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Concerns eligibility of education employees for unemployment.

# SENATE, No. 2852

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED AUGUST 27, 2020

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**  
**District 3 (Cumberland, Gloucester and Salem)**  
**Senator SANDRA B. CUNNINGHAM**  
**District 31 (Hudson)**  
**Assemblywoman JOANN DOWNEY**  
**District 11 (Monmouth)**  
**Assemblyman JAMEL C. HOLLEY**  
**District 20 (Union)**

**Co-Sponsored by:**

**Senators Turner, Pou, Assemblymen Johnson, Armato, Mazzeo and  
Assemblywoman McKnight**

**SYNOPSIS**

Concerns eligibility of education employees for unemployment.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 10/29/2020)**

1 AN ACT concerning eligibility of certain education employees for  
2 unemployment benefits and amending R.S.43:21-4.

3

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

6

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

8 43:21-4. Benefit eligibility conditions. An unemployed  
9 individual shall be eligible to receive benefits with respect to any  
10 week eligible only if:

11 (a) The individual has filed a claim at an unemployment  
12 insurance claims office and thereafter continues to report at an  
13 employment service office or unemployment insurance claims  
14 office, as directed by the division in accordance with such  
15 regulations as the division may prescribe, except that the division  
16 may, by regulation, waive or alter either or both of the requirements  
17 of this subsection as to individuals attached to regular jobs, and as  
18 to such other types of cases or situations with respect to which the  
19 division finds that compliance with such requirements would be  
20 oppressive, or would be inconsistent with the purpose of this act;  
21 provided that no such regulation shall conflict with subsection (a) of  
22 R.S.43:21-3.

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

25 (c) (1) The individual is able to work, and is available for work,  
26 and has demonstrated to be actively seeking work, except as  
27 hereinafter provided in this subsection or in subsection (f) of this  
28 section.

29 (2) The director may modify the requirement of actively seeking  
30 work if such modification of this requirement is warranted by  
31 economic conditions.

32 (3) No individual, who is otherwise eligible, shall be deemed  
33 ineligible, or unavailable for work, because the individual is on  
34 vacation, without pay, during said week, if said vacation is not the  
35 result of the individual's own action as distinguished from any  
36 collective action of a collective bargaining agent or other action  
37 beyond the individual's control.

38 (4) (A) Subject to such limitations and conditions as the  
39 division may prescribe, an individual, who is otherwise eligible,  
40 shall not be deemed unavailable for work or ineligible because the  
41 individual is attending a training program approved for the  
42 individual by the division to enhance the individual's employment  
43 opportunities or because the individual failed or refused to accept  
44 work while attending such program.

**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 (B) For the purpose of this paragraph (4), any training program  
2 shall be regarded as approved by the division for the individual if  
3 the program and the individual meet the following requirements:

4 (i) The training is for a labor demand occupation and is likely to  
5 enhance the individual's marketable skills and earning power,  
6 except that the training may be for an occupation other than a labor  
7 demand occupation if the individual is receiving short-time benefits  
8 pursuant to the provisions of P.L.2011, c.154 (C.43:21-20.3 et al.)  
9 and the training is necessary to prevent a likely loss of jobs;

10 (ii) The training is provided by a competent and reliable private  
11 or public entity approved by the Commissioner of Labor and  
12 Workforce Development pursuant to the provisions of section 8 of  
13 the "1992 New Jersey Employment and Workforce Development  
14 Act," P.L.1992, c.43 (C.34:15D-8);

15 (iii) The individual can reasonably be expected to complete the  
16 program, either during or after the period of benefits;

17 (iv) The training does not include on the job training or other  
18 training under which the individual is paid by an employer for work  
19 performed by the individual during the time that the individual  
20 receives benefits; and

21 (v) The individual enrolls in vocational training, remedial  
22 education or a combination of both on a full-time basis, except that  
23 the training or education may be on a part-time basis if the  
24 individual is receiving short-time benefits pursuant to the provisions  
25 of P.L.2011, c.154 (C.43:21-20.3 et al.).

26 (C) If the requirements of subparagraph (B) of this paragraph (4)  
27 are met, the division shall not withhold approval of the training  
28 program for the individual for any of the following reasons:

29 (i) The training includes remedial basic skills education  
30 necessary for the individual to successfully complete the vocational  
31 component of the training;

32 (ii) The training is provided in connection with a program under  
33 which the individual may obtain a college degree, including a post-  
34 graduate degree;

35 (iii) The length of the training period under the program; or

36 (iv) The lack of a prior guarantee of employment upon  
37 completion of the training.

38 (D) For the purpose of this paragraph (4), "labor demand  
39 occupation" means an occupation for which there is or is likely to  
40 be an excess of demand over supply for adequately trained workers,  
41 including, but not limited to, an occupation designated as a labor  
42 demand occupation by the Center for Occupational Employment  
43 Information pursuant to the provisions of subsection d. of section  
44 27 of P.L.2005, c.354 (C.34:1A-86).

45 (5) An unemployed individual, who is otherwise eligible, shall  
46 not be deemed unavailable for work or ineligible solely by reason of  
47 the individual's attendance before a court in response to a summons  
48 for service on a jury.

1 (6) An unemployed individual, who is otherwise eligible, shall  
2 not be deemed unavailable for work or ineligible solely by reason of  
3 the individual's attendance at the funeral of an immediate family  
4 member, provided that the duration of the attendance does not  
5 extend beyond a two-day period.

6 For purposes of this paragraph, "immediate family member"  
7 includes any of the following individuals: father, mother, mother-  
8 in-law, father-in-law, grandmother, grandfather, grandchild, spouse,  
9 child, child placed by the Division of Youth and Family Services in  
10 the Department of Children and Families, sister or brother of the  
11 unemployed individual and any relatives of the unemployed  
12 individual residing in the unemployed individual's household.

13 (7) No individual, who is otherwise eligible, shall be deemed  
14 ineligible or unavailable for work with respect to any week because,  
15 during that week, the individual fails or refuses to accept work  
16 while the individual is participating on a full-time basis in self-  
17 employment assistance activities authorized by the division,  
18 whether or not the individual is receiving a self-employment  
19 allowance during that week.

20 (8) Any individual who is determined to be likely to exhaust  
21 regular benefits and need reemployment services based on  
22 information obtained by the worker profiling system shall not be  
23 eligible to receive benefits if the individual fails to participate in  
24 available reemployment services to which the individual is referred  
25 by the division or in similar services, unless the division determines  
26 that:

- 27 (A) The individual has completed the reemployment services; or  
28 (B) There is justifiable cause for the failure to participate, which  
29 shall include participation in employment and training, self-  
30 employment assistance activities or other activities authorized by  
31 the division to assist reemployment or enhance the marketable skills  
32 and earning power of the individual and which shall include any  
33 other circumstance indicated pursuant to this section in which an  
34 individual is not required to be available for and actively seeking  
35 work to receive benefits.

36 (9) An unemployed individual, who is otherwise eligible, shall  
37 not be deemed unavailable for work or ineligible solely by reason of  
38 the individual's work as a board worker for a county board of  
39 elections on an election day.

40 (10) An individual who is employed by a shared work employer  
41 and is otherwise eligible for benefits shall not be deemed ineligible  
42 for short-time benefits because the individual is unavailable for  
43 work with employers other than the shared work employer, so long  
44 as:

- 45 (A) The individual is able to work and is available to work the  
46 individual's normal full-time hours for the shared work employer;  
47 or

1 (B) The individual is attending a training program which is in  
2 compliance with the provisions of paragraph (4) of subsection (c) of  
3 this section and the agreements and certifications required pursuant  
4 to the provisions of section 2 of P.L.2011, c.154 (C.43:21-20.4).

5 (d) With respect to any benefit year commencing before January  
6 1, 2002, the individual has been totally or partially unemployed for  
7 a waiting period of one week in the benefit year which includes that  
8 week. When benefits become payable with respect to the third  
9 consecutive week next following the waiting period, the individual  
10 shall be eligible to receive benefits as appropriate with respect to  
11 the waiting period. No week shall be counted as a week of  
12 unemployment for the purposes of this subsection:

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

17 (2) If it has constituted a waiting period week under the  
18 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25  
19 et al.);

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

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

24 The waiting period provided by this subsection shall not apply to  
25 benefit years commencing on or after January 1, 2002. An  
26 individual whose total benefit amount was reduced by the  
27 application of the waiting period to a claim which occurred on or  
28 after January 1, 2002 and before the effective date of P.L.2002,  
29 c.13, shall be permitted to file a claim for the additional benefits  
30 attributable to the waiting period in the form and manner prescribed  
31 by the division, but not later than the 180th day following the  
32 effective date of P.L.2002, c.13 unless the division determines that  
33 there is good cause for a later filing.

34 (e) (1) (Deleted by amendment, P.L.2001, c.17).

35 (2) (Deleted by amendment, P.L.2008, c.17).

36 (3) (Deleted by amendment, P.L.2008, c.17).

37 (4) With respect to benefit years commencing on or after  
38 January 7, 2001, except as otherwise provided in paragraph (5) of  
39 this subsection, the individual has, during his base year as defined  
40 in subsection (c) of R.S.43:21-19:

41 (A) Established at least 20 base weeks as defined in paragraphs  
42 (2) and (3) of subsection (t) of R.S.43:21-19; or

43 (B) If the individual has not met the requirements of  
44 subparagraph (A) of this paragraph (4), earned remuneration not  
45 less than an amount 1,000 times the minimum wage in effect  
46 pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October  
47 1 of the calendar year preceding the calendar year in which the

1 benefit year commences, which amount shall be adjusted to the next  
2 higher multiple of \$100 if not already a multiple thereof.

3 (5) With respect to benefit years commencing on or after  
4 January 7, 2001, notwithstanding the provisions of paragraph (4) of  
5 this subsection, an unemployed individual claiming benefits on the  
6 basis of service performed in the production and harvesting of  
7 agricultural crops shall, subject to the limitations of subsection (i)  
8 of R.S.43:21-19, be eligible to receive benefits if during his base  
9 year, as defined in subsection (c) of R.S.43:21-19, the individual:

10 (A) Has established at least 20 base weeks as defined in  
11 paragraphs (2) and (3) of subsection (t) of R.S.43:21-19; or

12 (B) Has earned remuneration not less than an amount 1,000  
13 times the minimum wage in effect pursuant to section 5 of  
14 P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year  
15 preceding the calendar year in which the benefit year commences,  
16 which amount shall be adjusted to the next higher multiple of \$100  
17 if not already a multiple thereof; or

18 (C) Has performed at least 770 hours of service in the  
19 production and harvesting of agricultural crops.

20 (6) The individual applying for benefits in any successive  
21 benefit year has earned at least six times his previous weekly  
22 benefit amount and has had four weeks of employment since the  
23 beginning of the immediately preceding benefit year. This  
24 provision shall be in addition to the earnings requirements specified  
25 in paragraph (4) or (5) of this subsection, as applicable.

26 (f) (1) The individual has suffered any accident or sickness not  
27 compensable under the workers' compensation law, R.S.34:15-1 et  
28 seq. and resulting in the individual's total disability to perform any  
29 work for remuneration, and would be eligible to receive benefits  
30 under this chapter (R.S.43:21-1 et seq.) (without regard to the  
31 maximum amount of benefits payable during any benefit year)  
32 except for the inability to work and has furnished notice and proof  
33 of claim to the division, in accordance with its rules and  
34 regulations, and payment is not precluded by the provisions of  
35 R.S.43:21-3(d); provided, however, that benefits paid under this  
36 subsection (f) shall be computed on the basis of only those base  
37 year wages earned by the claimant as a "covered individual," as  
38 defined in subsection (b) of section 3 of P.L.1948, c.110 (C.43:21-  
39 27); provided further that no benefits shall be payable under this  
40 subsection to any individual:

41 (A) For any period during which such individual is not under the  
42 care of a legally licensed physician, dentist, optometrist, podiatrist,  
43 practicing psychologist, advanced practice nurse, or chiropractor,  
44 who, when requested by the division, shall certify within the scope  
45 of the practitioner's practice, the disability of the individual, the  
46 probable duration thereof, and, where applicable, the medical facts  
47 within the practitioner's knowledge;

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

1 (C) For any period of disability due to willfully or intentionally  
2 self-inflicted injury, or to injuries sustained in the perpetration by  
3 the individual of a crime of the first, second or third degree;

4 (D) For any week with respect to which or a part of which the  
5 individual has received or is seeking benefits under any  
6 unemployment compensation or disability benefits law of any other  
7 state or of the United States; provided that if the appropriate agency  
8 of such other state or the United States finally determines that the  
9 individual is not entitled to such benefits, this disqualification shall  
10 not apply;

11 (E) For any week with respect to which or part of which the  
12 individual has received or is seeking disability benefits under the  
13 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25  
14 et al.);

15 (F) For any period of disability commencing while such  
16 individual is a "covered individual," as defined in subsection (b) of  
17 section 3 of the "Temporary Disability Benefits Law," P.L.1948,  
18 c.110 (C.43:21-27).

19 (2) The individual is taking family temporary disability leave to  
20 provide care for a family member with a serious health condition or  
21 to be with a child during the first 12 months after the child's birth or  
22 placement of the child for adoption or as a foster child with the  
23 individual, and the individual would be eligible to receive benefits  
24 under R.S.43:21-1 et seq. (without regard to the maximum amount  
25 of benefits payable during any benefit year) except for the  
26 individual's unavailability for work while taking the family  
27 temporary disability leave, and the individual has furnished notice  
28 and proof of claim to the division, in accordance with its rules and  
29 regulations, and payment is not precluded by the provisions of  
30 R.S.43:21-3(d) provided, however, that benefits paid under this  
31 subsection (f) shall be computed on the basis of only those base  
32 year wages earned by the claimant as a "covered individual," as  
33 defined in subsection (b) of section 3 of P.L.1948, c.110 (C.43:21-  
34 27); provided further that no benefits shall be payable under this  
35 subsection to any individual:

36 (A) For any week with respect to which or a part of which the  
37 individual has received or is seeking benefits under any  
38 unemployment compensation or disability benefits law of any other  
39 state or of the United States; provided that if the appropriate agency  
40 of such other state or the United States finally determines that the  
41 individual is not entitled to such benefits, this disqualification shall  
42 not apply;

43 (B) For any week with respect to which or part of which the  
44 individual has received or is seeking disability benefits for a  
45 disability of the individual under the "Temporary Disability  
46 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.);

47 (C) For any period of family temporary disability leave  
48 commencing while the individual is a "covered individual," as

1 defined in subsection (b) of section 3 of the "Temporary Disability  
2 Benefits Law," P.L.1948, c.110 (C.43:21-27); or

3 (D) For any period of family temporary disability leave for a  
4 serious health condition of a family member of the claimant during  
5 which the family member is not receiving inpatient care in a  
6 hospital, hospice, or residential medical care facility and is not  
7 subject to continuing medical treatment or continuing supervision  
8 by a health care provider, who, when requested by the division,  
9 shall certify within the scope of the provider's practice, the serious  
10 health condition of the family member, the probable duration  
11 thereof, and, where applicable, the medical facts within the  
12 provider's knowledge.

13 (3) Benefit payments under this subsection (f) shall be charged  
14 to and paid from the State disability benefits fund established by the  
15 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25  
16 et al.), and shall not be charged to any employer account in  
17 computing any employer's experience rate for contributions payable  
18 under this chapter.

19 (g) Benefits based on service in employment defined in  
20 subparagraphs (B) and (C) of R.S.43:21-19 (i)(1) shall be payable  
21 in the same amount and on the terms and subject to the same  
22 conditions as benefits payable on the basis of other service subject  
23 to the "unemployment compensation law"; except that,  
24 notwithstanding any other provisions of the "unemployment  
25 compensation law":

26 (1) With respect to service performed after December 31, 1977,  
27 in an instructional, research, or principal administrative capacity for  
28 an educational institution, benefits shall not be paid based on such  
29 services for any week of unemployment commencing during the  
30 period between two successive academic years, or during a similar  
31 period between two regular terms, whether or not successive, or  
32 during a period of paid sabbatical leave provided for in the  
33 individual's contract, to any individual if such individual performs  
34 such services in the first of such academic years (or terms) and if  
35 there is a contract or a reasonable assurance that such individual  
36 will perform services in any such capacity for any educational  
37 institution in the second of such academic years or terms;

38 (2) With respect to weeks of unemployment beginning after  
39 September 3, 1982, on the basis of service performed in any other  
40 capacity for an educational institution, benefits shall not be paid on  
41 the basis of such services to any individual for any week which  
42 commences during a period between two successive academic years  
43 or terms if such individual performs such services in the first of  
44 such academic years or terms and there is a reasonable assurance  
45 that such individual will perform such services in the second of  
46 such academic years or terms, except that if benefits are denied to  
47 any individual under this paragraph (2) and the individual was not  
48 offered an opportunity to perform these services for the educational

1 institution for the second of any academic years or terms, the  
2 individual shall be entitled to a retroactive payment of benefits for  
3 each week for which the individual filed a timely claim for benefits  
4 and for which benefits were denied solely by reason of this clause;

5 (3) With respect to those services described in paragraphs (1)  
6 and (2) above, benefits shall not be paid on the basis of such  
7 services to any individual for any week which commences during  
8 an established and customary vacation period or holiday recess if  
9 such individual performs such services in the period immediately  
10 before such vacation period or holiday recess, and there is a  
11 reasonable assurance that such individual will perform such  
12 services in the period immediately following such period or holiday  
13 recess;

14 (4) With respect to any services described in paragraphs (1) and  
15 (2) above, benefits shall not be paid as specified in paragraphs (1),  
16 (2), and (3) above to any individual who performed those services  
17 in an educational institution while in the employ of an educational  
18 service agency, and for this purpose the term "educational service  
19 agency" means a governmental agency or governmental entity  
20 which is established and operated exclusively for the purpose of  
21 providing those services to one or more educational institutions;

22 (5) [with respect to services performed after the effective date of  
23 P.L.2020, c.57, and only upon written notification from the United  
24 States Department of Labor that the amendatory language added to  
25 this section by that act conforms to the "Between and Within  
26 Terms" denial provisions of 26 U.S.C. s.3304, as used in this  
27 subsection:

28 "Established and customary vacation period or holiday recess"  
29 includes those breaks scheduled during fall, winter, and spring  
30 recesses when those vacation periods occur within a term or  
31 semester. "Established and customary vacation period or holiday  
32 recess" does not include the summer term or semester, unless, based  
33 on objective criteria including enrollment and staffing, the summer  
34 is not in fact a part of the academic year for a particular institution.

35 "Reasonable assurance" means a written, verbal, or implied  
36 agreement that the employee will perform services in the same  
37 capacity during the ensuing academic year or term as in the first  
38 academic year or term. A person shall not be deemed to be  
39 performing services "in the same capacity" unless those services are  
40 rendered under the same terms or conditions of employment in the  
41 ensuing year as in the first academic year or term.

42 An individual who is tenured or holds tenure track status is  
43 considered to have reasonable assurance, unless advised otherwise.  
44 For the purposes of this subsection, tenure track status means a  
45 probationary faculty employee having an opportunity to be  
46 reviewed for tenure.

47 A person is presumed not to have reasonable assurance under an  
48 offer that is conditioned on enrollment, funding, program changes,

1 or other circumstances under the control of the employer. It is the  
2 employer's burden to provide sufficient documentation to overcome  
3 this presumption. Reasonable assurance shall be determined on a  
4 case-by-case basis considering the totality of circumstances rather  
5 than on the existence of any one factor. For an individual to be  
6 regarded as having reasonable assurance of employment, the totality  
7 of circumstances must show that it is highly probable that there is a  
8 job available for the employee in the following academic year or  
9 term. If any contingencies in the employment offer are within the  
10 employer's control, the claimant shall not be regarded as having a  
11 reasonable assurance of employment. Contingencies within the  
12 employer's control include, but are not limited to, enrollment,  
13 funding, including appropriations and the allocation of funding,  
14 program changes, final course offering, and facility availability. **As**  
15 used in this subsection (g) in order for there to be a "reasonable  
16 assurance" all of the following requirements shall be met:

17 (A) The educational institution has made an offer of employment  
18 in the following academic year or term that is either written, oral, or  
19 implied;

20 (B) The offer of employment in the following academic year or  
21 term was made by an individual with actual authority to offer  
22 employment;

23 (C) The employment offered in the following academic year or  
24 term shall be in the same capacity;

25 (D) The economic conditions of the employment offered may not  
26 be considerably less in the following academic year or term than in  
27 the then current academic year or term. For the purpose of this  
28 paragraph, "considerably less" means that the claimant will earn  
29 less than 90 percent of the amount the claimant earned in the then  
30 current academic year or term;

31 (E) The offer of employment in the following academic year or  
32 term is not contingent upon a factor or factors that are within the  
33 educational institution's control, including but not limited to, course  
34 programming, decisions on how to allocate available funding, final  
35 course offerings, program changes, and facility availability; and

36 (F) Based on a totality of the circumstances, it is highly probable  
37 that there is a job available for the claimant in the following  
38 academic year or term. If a job offer contains a contingency,  
39 primary weight should be given to the contingent nature of the offer  
40 of employment. Contingencies that are not necessarily within the  
41 educational institution's control, such as funding, enrollment and  
42 seniority, may be taken into consideration but the existence of any  
43 one contingency should not determine whether it is highly probably  
44 that there is a job available for the claimant in the following  
45 academic year or term.

46 (6) Determinations by the department whether claimants have a  
47 "reasonable assurance" shall be done on a case-by-case basis.



1       (7) Each educational institution shall provide the following to the  
2 department, in a form, including electronic form, prescribed by the  
3 commissioner, no less than 10 business days prior to the end of the  
4 academic year or term:

5       (A) A list of all employees who the educational institution has  
6 concluded do not have a reasonable assurance of employment in the  
7 following academic year or term, along with information prescribed  
8 by the commissioner regarding each such employee, which  
9 information shall include, but not be limited to, name and social  
10 security number; and

11       (B) For each employee that the educational institution maintains  
12 does have a reasonable assurance of employment in the following  
13 academic year or term, a statement explaining the manner in which  
14 the employee was given a reasonable assurance of employment, that  
15 is, whether it was in writing, oral, or implied, and what information  
16 about the offer, including contingencies, was communicated to the  
17 individual.

18       (8) The statement required under subparagraph (B) of paragraph  
19 (7) of this subsection (g) may be used by the department in its  
20 analysis under paragraphs (5) and (6) of this subsection (g), but it  
21 does not conclusively demonstrate that the claimant has a  
22 reasonable assurance of employment in the following academic year  
23 or term.

24       (9) Failure of an educational institution to provide the statement  
25 required under subparagraph (B) of paragraph (7) of this subsection  
26 (g) not less than 10 business days prior to the end of the academic  
27 year or term shall result in a rebuttable presumption that the  
28 claimant does not have a reasonable assurance of employment in the  
29 following academic year or term. This rebuttable presumption shall  
30 give rise to an inference that the claimant does not have a  
31 reasonable assurance of employment in the following academic year  
32 or term, but shall not conclusively demonstrate that the claimant  
33 does not have a reasonable assurance of employment in the  
34 following academic year or term.

35       (10) If any part of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_)(pending before the  
36 Legislature as this bill) is found to be in conflict with federal  
37 requirements that are a prescribed condition to the allocation of  
38 federal funds to the State or the eligibility of employers in this State  
39 for federal unemployment tax credits, the conflicting part of that act  
40 is inoperative solely to the extent of the conflict, and the finding or  
41 determination does not affect the operation of the remainder of this  
42 act. Rules adopted under this act shall meet federal requirements  
43 that are a necessary condition to the receipt of federal funds by the  
44 State or the granting of federal unemployment tax credits to  
45 employers in this State.

46       (h) Benefits shall not be paid to any individual on the basis of  
47 any services, substantially all of which consist of participating in  
48 sports or athletic events or training or preparing to so participate,

1 for any week which commences during the period between two  
2 successive sports seasons (or similar periods) if such individual  
3 performed such services in the first of such seasons (or similar  
4 periods) and there is a reasonable assurance that such individual  
5 will perform such services in the later of such seasons (or similar  
6 periods).

7 (i) (1) Benefits shall not be paid on the basis of services  
8 performed by an alien unless such alien is an individual who was  
9 lawfully admitted for permanent residence at the time the services  
10 were performed and was lawfully present for the purpose of  
11 performing the services or otherwise was permanently residing in  
12 the United States under color of law at the time the services were  
13 performed (including an alien who is lawfully present in the United  
14 States as a result of the application of the provisions of section  
15 212(d)(5) (8 U.S.C. s.1182 (d)(5)) of the Immigration and  
16 Nationality Act (8 U.S.C. s.1101 et seq.)); provided that any  
17 modifications of the provisions of section 3304(a)(14) of the  
18 Federal Unemployment Tax Act (26 U.S.C. s. 3304 (a) (14)) as  
19 provided by Pub.L.94-566, which specify other conditions or other  
20 effective dates than stated herein for the denial of benefits based on  
21 services performed by aliens and which modifications are required  
22 to be implemented under State law as a condition for full tax credit  
23 against the tax imposed by the Federal Unemployment Tax Act,  
24 shall be deemed applicable under the provisions of this section.

25 (2) Any data or information required of individuals applying for  
26 benefits to determine whether benefits are not payable to them  
27 because of their alien status shall be uniformly required from all  
28 applicants for benefits.

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

33 (j) Notwithstanding any other provision of this chapter, the  
34 director may, to the extent that it may be deemed efficient and  
35 economical, provide for consolidated administration by one or more  
36 representatives or deputies of claims made pursuant to subsection  
37 (f) of this section with those made pursuant to Article III (State  
38 plan) of the "Temporary Disability Benefits Law," P.L.1948, c.110  
39 (C.43:21-25 et al.).

40 (cf: P.L.2020, c.57, s.10)

41

42 2. This act shall take effect immediately.

43

44

45

#### STATEMENT

46

47 This bill provides that certain employees of educational  
48 institutions may not be denied unemployment insurance (UI)

1 benefits when those employees are denied employment during a  
2 summer or holiday break without assurance of reinstatement after  
3 the break. The bill clarifies provisions of the UI law making an  
4 education institution employee eligible for UI benefits during a  
5 summer or holiday break when the employee is not given a  
6 reasonable assurance of equivalent work after the break by  
7 specifying that in order for there to be reasonable assurances:

8 1. An offer of employment for after the break is required to be  
9 made;

10 2. The offer of employment is required to be made by an  
11 individual with authority to offer employment;

12 3. The employment is required to be in the same capacity;

13 4. The economic conditions of the offer cannot be substantially  
14 less than in previous employment;

15 5. The offer of employment is required not to be contingent on  
16 factors within the institution's control; and

17 6. The agency is required to find based on the totality of the  
18 circumstances that it is highly probable a claimant will get a job  
19 after the break.

20 This bill requires educational institution employers to inform the  
21 Department of Labor of employees who they have determined do  
22 not have reasonable assurances or provide an explanation for those  
23 that they deem do have reasonable assurances 10 days prior to the  
24 end of the academic term. If an employer fails to meet the 10 day  
25 deadline, the claimant is entitled to a rebuttable presumption that  
26 they qualify for a benefit.

# ASSEMBLY LABOR COMMITTEE

## STATEMENT TO

### SENATE, No. 2852

# STATE OF NEW JERSEY

DATED: OCTOBER 22, 2020

The Assembly Labor Committee reports favorably Senate Bill No. 2852.

This bill provides that certain employees of educational institutions may not be denied unemployment insurance (UI) benefits when those employees are denied employment during a summer or holiday break without assurance of reinstatement after the break. The bill clarifies provisions of the UI law making an education institution employee eligible for UI benefits during a summer or holiday break when the employee is not given a reasonable assurance of equivalent work after the break by specifying that in order for there to be reasonable assurances:

- (1) an offer of employment for after the break is required to be made;
- (2) the offer of employment is required to be made by an individual with authority to offer employment;
- (3) the employment is required to be in the same capacity;
- (4) the economic conditions of the offer cannot be substantially less than in previous employment;
- (5) the offer of employment is required not to be contingent on factors within the institution's control; and
- (6) the agency is required to find based on the totality of the circumstances that it is highly probable a claimant will get a job after the break.

This bill requires educational institution employers to inform the Department of Labor of employees who they have determined do not have reasonable assurances or provide an explanation for those that they deem do have reasonable assurances 10 days prior to the end of the academic term. If an employer fails to meet the 10 day deadline, the claimant is entitled to a rebuttable presumption that they qualify for a benefit.

# SENATE EDUCATION COMMITTEE

## STATEMENT TO

### SENATE, No. 2852

# STATE OF NEW JERSEY

DATED: SEPTEMBER 14, 2020

The Senate Education Committee reports favorably Senate Bill No. 2852.

This bill provides that certain employees of educational institutions may not be denied unemployment insurance (UI) benefits when those employees are denied employment during a summer or holiday break without assurance of reinstatement after the break. The bill clarifies provisions of the UI law making an education institution employee eligible for UI benefits during a summer or holiday break when the employee is not given a reasonable assurance of equivalent work after the break by specifying that in order for there to be reasonable assurances:

- (1) an offer of employment for after the break is required to be made;
- (2) the offer of employment is required to be made by an individual with authority to offer employment;
- (3) the employment is required to be in the same capacity;
- (4) the economic conditions of the offer cannot be substantially less than in previous employment;
- (5) the offer of employment is required not to be contingent on factors within the institution's control; and
- (6) the agency is required to find based on the totality of the circumstances that it is highly probable a claimant will get a job after the break.

This bill requires educational institution employers to inform the Department of Labor of employees who they have determined do not have reasonable assurances or provide an explanation for those that they deem do have reasonable assurances 10 days prior to the end of the academic term. If an employer fails to meet the 10 day deadline, the claimant is entitled to a rebuttable presumption that they qualify for a benefit.

# ASSEMBLY, No. 4613

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED SEPTEMBER 14, 2020

**Sponsored by:**

**Assemblywoman JOANN DOWNEY**

**District 11 (Monmouth)**

**Assemblyman JAMEL C. HOLLEY**

**District 20 (Union)**

**Co-Sponsored by:**

**Assemblymen Johnson, Armato, Mazzeo and Assemblywoman McKnight**

**SYNOPSIS**

Concerns eligibility of education employees for unemployment.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 10/29/2020)**

A4613 DOWNEY, HOLLEY

2

1 AN ACT concerning eligibility of certain education employees for  
2 unemployment benefits and amending R.S.43:21-4.

3

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

6

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

8 43:21-4. Benefit eligibility conditions. An unemployed  
9 individual shall be eligible to receive benefits with respect to any  
10 week eligible only if:

11 (a) The individual has filed a claim at an unemployment  
12 insurance claims office and thereafter continues to report at an  
13 employment service office or unemployment insurance claims  
14 office, as directed by the division in accordance with such  
15 regulations as the division may prescribe, except that the division  
16 may, by regulation, waive or alter either or both of the requirements  
17 of this subsection as to individuals attached to regular jobs, and as  
18 to such other types of cases or situations with respect to which the  
19 division finds that compliance with such requirements would be  
20 oppressive, or would be inconsistent with the purpose of this act;  
21 provided that no such regulation shall conflict with subsection (a) of  
22 R.S.43:21-3.

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

25 (c) (1) The individual is able to work, and is available for work,  
26 and has demonstrated to be actively seeking work, except as  
27 hereinafter provided in this subsection or in subsection (f) of this  
28 section.

29 (2) The director may modify the requirement of actively seeking  
30 work if such modification of this requirement is warranted by  
31 economic conditions.

32 (3) No individual, who is otherwise eligible, shall be deemed  
33 ineligible, or unavailable for work, because the individual is on  
34 vacation, without pay, during said week, if said vacation is not the  
35 result of the individual's own action as distinguished from any  
36 collective action of a collective bargaining agent or other action  
37 beyond the individual's control.

38 (4) (A) Subject to such limitations and conditions as the division  
39 may prescribe, an individual, who is otherwise eligible, shall not be  
40 deemed unavailable for work or ineligible because the individual is  
41 attending a training program approved for the individual by the  
42 division to enhance the individual's employment opportunities or  
43 because the individual failed or refused to accept work while  
44 attending such program.

45 (B) For the purpose of this paragraph (4), any training program

**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 shall be regarded as approved by the division for the individual if  
2 the program and the individual meet the following requirements:

3 (i) The training is for a labor demand occupation and is likely to  
4 enhance the individual's marketable skills and earning power,  
5 except that the training may be for an occupation other than a labor  
6 demand occupation if the individual is receiving short-time benefits  
7 pursuant to the provisions of P.L.2011, c.154 (C.43:21-20.3 et al.)  
8 and the training is necessary to prevent a likely loss of jobs;

9 (ii) The training is provided by a competent and reliable private  
10 or public entity approved by the Commissioner of Labor and  
11 Workforce Development pursuant to the provisions of section 8 of  
12 the "1992 New Jersey Employment and Workforce Development  
13 Act," P.L.1992, c.43 (C.34:15D-8);

14 (iii) The individual can reasonably be expected to complete the  
15 program, either during or after the period of benefits;

16 (iv) The training does not include on the job training or other  
17 training under which the individual is paid by an employer for work  
18 performed by the individual during the time that the individual  
19 receives benefits; and

20 (v) The individual enrolls in vocational training, remedial  
21 education or a combination of both on a full-time basis, except that  
22 the training or education may be on a part-time basis if the  
23 individual is receiving short-time benefits pursuant to the provisions  
24 of P.L.2011, c.154 (C.43:21-20.3 et al.).

25 (C) If the requirements of subparagraph (B) of this paragraph (4)  
26 are met, the division shall not withhold approval of the training  
27 program for the individual for any of the following reasons:

28 (i) The training includes remedial basic skills education  
29 necessary for the individual to successfully complete the vocational  
30 component of the training;

31 (ii) The training is provided in connection with a program under  
32 which the individual may obtain a college degree, including a post-  
33 graduate degree;

34 (iii) The length of the training period under the program; or

35 (iv) The lack of a prior guarantee of employment upon  
36 completion of the training.

37 (D) For the purpose of this paragraph (4), "labor demand  
38 occupation" means an occupation for which there is or is likely to  
39 be an excess of demand over supply for adequately trained workers,  
40 including, but not limited to, an occupation designated as a labor  
41 demand occupation by the Center for Occupational Employment  
42 Information pursuant to the provisions of subsection d. of section  
43 27 of P.L.2005, c.354 (C.34:1A-86).

44 (5) An unemployed individual, who is otherwise eligible, shall  
45 not be deemed unavailable for work or ineligible solely by reason of  
46 the individual's attendance before a court in response to a summons  
47 for service on a jury.



1 (6) An unemployed individual, who is otherwise eligible, shall  
2 not be deemed unavailable for work or ineligible solely by reason of  
3 the individual's attendance at the funeral of an immediate family  
4 member, provided that the duration of the attendance does not  
5 extend beyond a two-day period.

6 For purposes of this paragraph, "immediate family member"  
7 includes any of the following individuals: father, mother, mother-  
8 in-law, father-in-law, grandmother, grandfather, grandchild, spouse,  
9 child, child placed by the Division of Youth and Family Services in  
10 the Department of Children and Families, sister or brother of the  
11 unemployed individual and any relatives of the unemployed  
12 individual residing in the unemployed individual's household.

13 (7) No individual, who is otherwise eligible, shall be deemed  
14 ineligible or unavailable for work with respect to any week because,  
15 during that week, the individual fails or refuses to accept work  
16 while the individual is participating on a full-time basis in self-  
17 employment assistance activities authorized by the division,  
18 whether or not the individual is receiving a self-employment  
19 allowance during that week.

20 (8) Any individual who is determined to be likely to exhaust  
21 regular benefits and need reemployment services based on  
22 information obtained by the worker profiling system shall not be  
23 eligible to receive benefits if the individual fails to participate in  
24 available reemployment services to which the individual is referred  
25 by the division or in similar services, unless the division determines  
26 that:

- 27 (A) The individual has completed the reemployment services; or  
28 (B) There is justifiable cause for the failure to participate, which  
29 shall include participation in employment and training, self-  
30 employment assistance activities or other activities authorized by  
31 the division to assist reemployment or enhance the marketable skills  
32 and earning power of the individual and which shall include any  
33 other circumstance indicated pursuant to this section in which an  
34 individual is not required to be available for and actively seeking  
35 work to receive benefits.

36 (9) An unemployed individual, who is otherwise eligible, shall  
37 not be deemed unavailable for work or ineligible solely by reason of  
38 the individual's work as a board worker for a county board of  
39 elections on an election day.

40 (10) An individual who is employed by a shared work employer  
41 and is otherwise eligible for benefits shall not be deemed ineligible  
42 for short-time benefits because the individual is unavailable for  
43 work with employers other than the shared work employer, so long  
44 as:

- 45 (A) The individual is able to work and is available to work the  
46 individual's normal full-time hours for the shared work employer;  
47 or

1 (B) The individual is attending a training program which is in  
2 compliance with the provisions of paragraph (4) of subsection (c) of  
3 this section and the agreements and certifications required pursuant  
4 to the provisions of section 2 of P.L.2011, c.154 (C.43:21-20.4).

5 (d) With respect to any benefit year commencing before January  
6 1, 2002, the individual has been totally or partially unemployed for  
7 a waiting period of one week in the benefit year which includes that  
8 week. When benefits become payable with respect to the third  
9 consecutive week next following the waiting period, the individual  
10 shall be eligible to receive benefits as appropriate with respect to  
11 the waiting period. No week shall be counted as a week of  
12 unemployment for the purposes of this subsection:

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

17 (2) If it has constituted a waiting period week under the  
18 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25  
19 et al.);

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

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

24 The waiting period provided by this subsection shall not apply to  
25 benefit years commencing on or after January 1, 2002. An  
26 individual whose total benefit amount was reduced by the  
27 application of the waiting period to a claim which occurred on or  
28 after January 1, 2002 and before the effective date of P.L.2002,  
29 c.13, shall be permitted to file a claim for the additional benefits  
30 attributable to the waiting period in the form and manner prescribed  
31 by the division, but not later than the 180th day following the  
32 effective date of P.L.2002, c.13 unless the division determines that  
33 there is good cause for a later filing.

34 (e) (1) (Deleted by amendment, P.L.2001, c.17).

35 (2) (Deleted by amendment, P.L.2008, c.17).

36 (3) (Deleted by amendment, P.L.2008, c.17).

37 (4) With respect to benefit years commencing on or after  
38 January 7, 2001, except as otherwise provided in paragraph (5) of  
39 this subsection, the individual has, during his base year as defined  
40 in subsection (c) of R.S.43:21-19:

41 (A) Established at least 20 base weeks as defined in paragraphs  
42 (2) and (3) of subsection (t) of R.S.43:21-19; or

43 (B) If the individual has not met the requirements of  
44 subparagraph (A) of this paragraph (4), earned remuneration not  
45 less than an amount 1,000 times the minimum wage in effect  
46 pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October  
47 1 of the calendar year preceding the calendar year in which the

1 benefit year commences, which amount shall be adjusted to the next  
2 higher multiple of \$100 if not already a multiple thereof.

3 (5) With respect to benefit years commencing on or after  
4 January 7, 2001, notwithstanding the provisions of paragraph (4) of  
5 this subsection, an unemployed individual claiming benefits on the  
6 basis of service performed in the production and harvesting of  
7 agricultural crops shall, subject to the limitations of subsection (i)  
8 of R.S.43:21-19, be eligible to receive benefits if during his base  
9 year, as defined in subsection (c) of R.S.43:21-19, the individual:

10 (A) Has established at least 20 base weeks as defined in  
11 paragraphs (2) and (3) of subsection (t) of R.S.43:21-19; or

12 (B) Has earned remuneration not less than an amount 1,000  
13 times the minimum wage in effect pursuant to section 5 of  
14 P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year  
15 preceding the calendar year in which the benefit year commences,  
16 which amount shall be adjusted to the next higher multiple of \$100  
17 if not already a multiple thereof; or

18 (C) Has performed at least 770 hours of service in the  
19 production and harvesting of agricultural crops.

20 (6) The individual applying for benefits in any successive  
21 benefit year has earned at least six times his previous weekly  
22 benefit amount and has had four weeks of employment since the  
23 beginning of the immediately preceding benefit year. This  
24 provision shall be in addition to the earnings requirements specified  
25 in paragraph (4) or (5) of this subsection, as applicable.

26 (f) (1) The individual has suffered any accident or sickness not  
27 compensable under the workers' compensation law, R.S.34:15-1 et  
28 seq. and resulting in the individual's total disability to perform any  
29 work for remuneration, and would be eligible to receive benefits  
30 under this chapter (R.S.43:21-1 et seq.) (without regard to the  
31 maximum amount of benefits payable during any benefit year)  
32 except for the inability to work and has furnished notice and proof  
33 of claim to the division, in accordance with its rules and  
34 regulations, and payment is not precluded by the provisions of  
35 R.S.43:21-3(d); provided, however, that benefits paid under this  
36 subsection (f) shall be computed on the basis of only those base  
37 year wages earned by the claimant as a "covered individual," as  
38 defined in subsection (b) of section 3 of P.L.1948, c.110 (C.43:21-  
39 27); provided further that no benefits shall be payable under this  
40 subsection to any individual:

41 (A) For any period during which such individual is not under the  
42 care of a legally licensed physician, dentist, optometrist, podiatrist,  
43 practicing psychologist, advanced practice nurse, or chiropractor,  
44 who, when requested by the division, shall certify within the scope  
45 of the practitioner's practice, the disability of the individual, the  
46 probable duration thereof, and, where applicable, the medical facts  
47 within the practitioner's knowledge;

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

1 (C) For any period of disability due to willfully or intentionally  
2 self-inflicted injury, or to injuries sustained in the perpetration by  
3 the individual of a crime of the first, second or third degree;

4 (D) For any week with respect to which or a part of which the  
5 individual has received or is seeking benefits under any  
6 unemployment compensation or disability benefits law of any other  
7 state or of the United States; provided that if the appropriate agency  
8 of such other state or the United States finally determines that the  
9 individual is not entitled to such benefits, this disqualification shall  
10 not apply;

11 (E) For any week with respect to which or part of which the  
12 individual has received or is seeking disability benefits under the  
13 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25  
14 et al.);

15 (F) For any period of disability commencing while such  
16 individual is a "covered individual," as defined in subsection (b) of  
17 section 3 of the "Temporary Disability Benefits Law," P.L.1948,  
18 c.110 (C.43:21-27).

19 (2) The individual is taking family temporary disability leave to  
20 provide care for a family member with a serious health condition or  
21 to be with a child during the first 12 months after the child's birth or  
22 placement of the child for adoption or as a foster child with the  
23 individual, and the individual would be eligible to receive benefits  
24 under R.S.43:21-1 et seq. (without regard to the maximum amount  
25 of benefits payable during any benefit year) except for the  
26 individual's unavailability for work while taking the family  
27 temporary disability leave, and the individual has furnished notice  
28 and proof of claim to the division, in accordance with its rules and  
29 regulations, and payment is not precluded by the provisions of  
30 R.S.43:21-3(d) provided, however, that benefits paid under this  
31 subsection (f) shall be computed on the basis of only those base  
32 year wages earned by the claimant as a "covered individual," as  
33 defined in subsection (b) of section 3 of P.L.1948, c.110 (C.43:21-  
34 27); provided further that no benefits shall be payable under this  
35 subsection to any individual:

36 (A) For any week with respect to which or a part of which the  
37 individual has received or is seeking benefits under any  
38 unemployment compensation or disability benefits law of any other  
39 state or of the United States; provided that if the appropriate agency  
40 of such other state or the United States finally determines that the  
41 individual is not entitled to such benefits, this disqualification shall  
42 not apply;

43 (B) For any week with respect to which or part of which the  
44 individual has received or is seeking disability benefits for a  
45 disability of the individual under the "Temporary Disability  
46 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.);

47 (C) For any period of family temporary disability leave  
48 commencing while the individual is a "covered individual," as

1 defined in subsection (b) of section 3 of the "Temporary Disability  
2 Benefits Law," P.L.1948, c.110 (C.43:21-27); or

3 (D) For any period of family temporary disability leave for a  
4 serious health condition of a family member of the claimant during  
5 which the family member is not receiving inpatient care in a  
6 hospital, hospice, or residential medical care facility and is not  
7 subject to continuing medical treatment or continuing supervision  
8 by a health care provider, who, when requested by the division,  
9 shall certify within the scope of the provider's practice, the serious  
10 health condition of the family member, the probable duration  
11 thereof, and, where applicable, the medical facts within the  
12 provider's knowledge.

13 (3) Benefit payments under this subsection (f) shall be charged  
14 to and paid from the State disability benefits fund established by the  
15 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25  
16 et al.), and shall not be charged to any employer account in  
17 computing any employer's experience rate for contributions payable  
18 under this chapter.

19 (g) Benefits based on service in employment defined in  
20 subparagraphs (B) and (C) of R.S.43:21-19 (i)(1) shall be payable  
21 in the same amount and on the terms and subject to the same  
22 conditions as benefits payable on the basis of other service subject  
23 to the "unemployment compensation law"; except that,  
24 notwithstanding any other provisions of the "unemployment  
25 compensation law":

26 (1) With respect to service performed after December 31, 1977,  
27 in an instructional, research, or principal administrative capacity for  
28 an educational institution, benefits shall not be paid based on such  
29 services for any week of unemployment commencing during the  
30 period between two successive academic years, or during a similar  
31 period between two regular terms, whether or not successive, or  
32 during a period of paid sabbatical leave provided for in the  
33 individual's contract, to any individual if such individual performs  
34 such services in the first of such academic years (or terms) and if  
35 there is a contract or a reasonable assurance that such individual  
36 will perform services in any such capacity for any educational  
37 institution in the second of such academic years or terms;

38 (2) With respect to weeks of unemployment beginning after  
39 September 3, 1982, on the basis of service performed in any other  
40 capacity for an educational institution, benefits shall not be paid on  
41 the basis of such services to any individual for any week which  
42 commences during a period between two successive academic years  
43 or terms if such individual performs such services in the first of  
44 such academic years or terms and there is a reasonable assurance  
45 that such individual will perform such services in the second of  
46 such academic years or terms, except that if benefits are denied to  
47 any individual under this paragraph (2) and the individual was not  
48 offered an opportunity to perform these services for the educational

1 institution for the second of any academic years or terms, the  
2 individual shall be entitled to a retroactive payment of benefits for  
3 each week for which the individual filed a timely claim for benefits  
4 and for which benefits were denied solely by reason of this clause;

5 (3) With respect to those services described in paragraphs (1)  
6 and (2) above, benefits shall not be paid on the basis of such  
7 services to any individual for any week which commences during  
8 an established and customary vacation period or holiday recess if  
9 such individual performs such services in the period immediately  
10 before such vacation period or holiday recess, and there is a  
11 reasonable assurance that such individual will perform such  
12 services in the period immediately following such period or holiday  
13 recess;

14 (4) With respect to any services described in paragraphs (1) and  
15 (2) above, benefits shall not be paid as specified in paragraphs (1),  
16 (2), and (3) above to any individual who performed those services  
17 in an educational institution while in the employ of an educational  
18 service agency, and for this purpose the term "educational service  
19 agency" means a governmental agency or governmental entity  
20 which is established and operated exclusively for the purpose of  
21 providing those services to one or more educational institutions;

22 (5) [with respect to services performed after the effective date  
23 of P.L.2020, c.57, and only upon written notification from the  
24 United States Department of Labor that the amendatory language  
25 added to this section by that act conforms to the "Between and  
26 Within Terms" denial provisions of 26 U.S.C. s.3304, as used in  
27 this subsection:

28 "Established and customary vacation period or holiday recess"  
29 includes those breaks scheduled during fall, winter, and spring  
30 recesses when those vacation periods occur within a term or  
31 semester. "Established and customary vacation period or holiday  
32 recess" does not include the summer term or semester, unless, based  
33 on objective criteria including enrollment and staffing, the summer  
34 is not in fact a part of the academic year for a particular institution.

35 "Reasonable assurance" means a written, verbal, or implied  
36 agreement that the employee will perform services in the same  
37 capacity during the ensuing academic year or term as in the first  
38 academic year or term. A person shall not be deemed to be  
39 performing services "in the same capacity" unless those services are  
40 rendered under the same terms or conditions of employment in the  
41 ensuing year as in the first academic year or term.

42 An individual who is tenured or holds tenure track status is  
43 considered to have reasonable assurance, unless advised otherwise.  
44 For the purposes of this subsection, tenure track status means a  
45 probationary faculty employee having an opportunity to be  
46 reviewed for tenure.

47 A person is presumed not to have reasonable assurance under an  
48 offer that is conditioned on enrollment, funding, program changes,

1 or other circumstances under the control of the employer. It is the  
2 employer's burden to provide sufficient documentation to overcome  
3 this presumption. Reasonable assurance shall be determined on a  
4 case-by-case basis considering the totality of circumstances rather  
5 than on the existence of any one factor. For an individual to be  
6 regarded as having reasonable assurance of employment, the totality  
7 of circumstances must show that it is highly probable that there is a  
8 job available for the employee in the following academic year or  
9 term. If any contingencies in the employment offer are within the  
10 employer's control, the claimant shall not be regarded as having a  
11 reasonable assurance of employment. Contingencies within the  
12 employer's control include, but are not limited to, enrollment,  
13 funding, including appropriations and the allocation of funding,  
14 program changes, final course offering, and facility availability. **As**  
15 used in this subsection (g) in order for there to be a "reasonable  
16 assurance" all of the following requirements shall be met:

17 (A) The educational institution has made an offer of employment  
18 in the following academic year or term that is either written, oral, or  
19 implied;

20 (B) The offer of employment in the following academic year or  
21 term was made by an individual with actual authority to offer  
22 employment;

23 (C) The employment offered in the following academic year or  
24 term shall be in the same capacity;

25 (D) The economic conditions of the employment offered may not  
26 be considerably less in the following academic year or term than in  
27 the then current academic year or term. For the purpose of this  
28 paragraph, "considerably less" means that the claimant will earn  
29 less than 90 percent of the amount the claimant earned in the then  
30 current academic year or term;

31 (E) The offer of employment in the following academic year or  
32 term is not contingent upon a factor or factors that are within the  
33 educational institution's control, including but not limited to, course  
34 programming, decisions on how to allocate available funding, final  
35 course offerings, program changes, and facility availability; and

36 (F) Based on a totality of the circumstances, it is highly  
37 probable that there is a job available for the claimant in the  
38 following academic year or term. If a job offer contains a  
39 contingency, primary weight should be given to the contingent  
40 nature of the offer of employment. Contingencies that are not  
41 necessarily within the educational institution's control, such as  
42 funding, enrollment and seniority, may be taken into consideration  
43 but the existence of any one contingency should not determine  
44 whether it is highly probably that there is a job available for the  
45 claimant in the following academic year or term.

46 (6) Determinations by the department whether claimants have a  
47 "reasonable assurance" shall be done on a case-by-case basis.

1       (7) Each educational institution shall provide the following to  
2 the department, in a form, including electronic form, prescribed by  
3 the commissioner, no less than 10 business days prior to the end of  
4 the academic year or term:

5       (A) A list of all employees who the educational institution has  
6 concluded do not have a reasonable assurance of employment in the  
7 following academic year or term, along with information prescribed  
8 by the commissioner regarding each such employee, which  
9 information shall include, but not be limited to, name and social  
10 security number; and

11       (B) For each employee that the educational institution maintains  
12 does have a reasonable assurance of employment in the following  
13 academic year or term, a statement explaining the manner in which  
14 the employee was given a reasonable assurance of employment, that  
15 is, whether it was in writing, oral, or implied, and what information  
16 about the offer, including contingencies, was communicated to the  
17 individual.

18       (8) The statement required under subparagraph (B) of paragraph  
19 (7) of this subsection (g) may be used by the department in its  
20 analysis under paragraphs (5) and (6) of this subsection (g), but it  
21 does not conclusively demonstrate that the claimant has a  
22 reasonable assurance of employment in the following academic year  
23 or term.

24       (9) Failure of an educational institution to provide the statement  
25 required under subparagraph (B) of paragraph (7) of this subsection  
26 (g) not less than 10 business days prior to the end of the academic  
27 year or term shall result in a rebuttable presumption that the  
28 claimant does not have a reasonable assurance of employment in the  
29 following academic year or term. This rebuttable presumption shall  
30 give rise to an inference that the claimant does not have a  
31 reasonable assurance of employment in the following academic year  
32 or term, but shall not conclusively demonstrate that the claimant  
33 does not have a reasonable assurance of employment in the  
34 following academic year or term.

35       (10) If any part of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_)(pending before the  
36 Legislature as this bill) is found to be in conflict with federal  
37 requirements that are a prescribed condition to the allocation of  
38 federal funds to the State or the eligibility of employers in this State  
39 for federal unemployment tax credits, the conflicting part of that act  
40 is inoperative solely to the extent of the conflict, and the finding or  
41 determination does not affect the operation of the remainder of this  
42 act. Rules adopted under this act shall meet federal requirements  
43 that are a necessary condition to the receipt of federal funds by the  
44 State or the granting of federal unemployment tax credits to  
45 employers in this State.

46       (h) Benefits shall not be paid to any individual on the basis of  
47 any services, substantially all of which consist of participating in  
48 sports or athletic events or training or preparing to so participate,



1 for any week which commences during the period between two  
2 successive sports seasons (or similar periods) if such individual  
3 performed such services in the first of such seasons (or similar  
4 periods) and there is a reasonable assurance that such individual  
5 will perform such services in the later of such seasons (or similar  
6 periods).

7 (i) (1) Benefits shall not be paid on the basis of services  
8 performed by an alien unless such alien is an individual who was  
9 lawfully admitted for permanent residence at the time the services  
10 were performed and was lawfully present for the purpose of  
11 performing the services or otherwise was permanently residing in  
12 the United States under color of law at the time the services were  
13 performed (including an alien who is lawfully present in the United  
14 States as a result of the application of the provisions of section  
15 212(d)(5) (8 U.S.C. s.1182 (d)(5)) of the Immigration and  
16 Nationality Act (8 U.S.C. s.1101 et seq.)); provided that any  
17 modifications of the provisions of section 3304(a)(14) of the  
18 Federal Unemployment Tax Act (26 U.S.C. s. 3304 (a) (14)) as  
19 provided by Pub.L.94-566, which specify other conditions or other  
20 effective dates than stated herein for the denial of benefits based on  
21 services performed by aliens and which modifications are required  
22 to be implemented under State law as a condition for full tax credit  
23 against the tax imposed by the Federal Unemployment Tax Act,  
24 shall be deemed applicable under the provisions of this section.

25 (2) Any data or information required of individuals applying for  
26 benefits to determine whether benefits are not payable to them  
27 because of their alien status shall be uniformly required from all  
28 applicants for benefits.

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

33 (j) Notwithstanding any other provision of this chapter, the  
34 director may, to the extent that it may be deemed efficient and  
35 economical, provide for consolidated administration by one or more  
36 representatives or deputies of claims made pursuant to subsection  
37 (f) of this section with those made pursuant to Article III (State  
38 plan) of the "Temporary Disability Benefits Law," P.L.1948, c.110  
39 (C.43:21-25 et al.).

40 (cf: P.L.2020, c.57, s.10)

41

42 2. This act shall take effect immediately.

43

44

45

#### STATEMENT

46

47 This bill provides that certain employees of educational  
48 institutions may not be denied unemployment insurance (UI)

1 benefits when those employees are denied employment during a  
2 summer or holiday break without assurance of reinstatement after  
3 the break. The bill clarifies provisions of the UI law making an  
4 education institution employee eligible for UI benefits during a  
5 summer or holiday break when the employee is not given a  
6 reasonable assurance of equivalent work after the break by  
7 specifying that in order for there to be reasonable assurances:

8 1. An offer of employment for after the break is required to be  
9 made;

10 2. The offer of employment is required to be made by an  
11 individual with authority to offer employment;

12 3. The employment is required to be in the same capacity;

13 4. The economic conditions of the offer cannot be substantially  
14 less than in previous employment;

15 5. The offer of employment is required not to be contingent on  
16 factors within the institution's control; and

17 6. The agency is required to find based on the totality of the  
18 circumstances that it is highly probable a claimant will get a job  
19 after the break.

20 This bill requires educational institution employers to inform the  
21 Department of Labor of employees who they have determined do  
22 not have reasonable assurances or provide an explanation for those  
23 that they deem do have reasonable assurances 10 days prior to the  
24 end of the academic term. If an employer fails to meet the 10 day  
25 deadline, the claimant is entitled to a rebuttable presumption that  
26 they qualify for a benefit.

# ASSEMBLY LABOR COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 4613

# STATE OF NEW JERSEY

DATED: OCTOBER 22, 2020

The Assembly Labor Committee reports favorably Assembly Bill No. 4613.

This bill provides that certain employees of educational institutions may not be denied unemployment insurance (UI) benefits when those employees are denied employment during a summer or holiday break without assurance of reinstatement after the break. The bill clarifies provisions of the UI law making an education institution employee eligible for UI benefits during a summer or holiday break when the employee is not given a reasonable assurance of equivalent work after the break by specifying that in order for there to be reasonable assurances:

1. An offer of employment for after the break is required to be made;
2. The offer of employment is required to be made by an individual with authority to offer employment;
3. The employment is required to be in the same capacity;
4. The economic conditions of the offer cannot be substantially less than in previous employment;
5. The offer of employment is required not to be contingent on factors within the institution's control; and
6. The agency is required to find based on the totality of the circumstances that it is highly probable a claimant will get a job after the break.

This bill requires educational institution employers to inform the Department of Labor of employees who they have determined do not have reasonable assurances or provide an explanation for those that they deem do have reasonable assurances 10 days prior to the end of the academic term. If an employer fails to meet the 10 day deadline, the claimant is entitled to a rebuttable presumption that they qualify for a benefit.

# Governor Murphy Signs Legislation Clarifying Eligibility of Employees of Education Institutions to Receive Unemployment Benefits

11/10/2020

**TRENTON** – Governor Phil Murphy today signed S2852, which clarifies when employees that are denied employment during a summer or holiday break are eligible for unemployment benefits by setting forth a standard for determining whether there is a reasonable assurance of reinstatement after the break.

“Our adjunct professors have too often been caught in limbo in terms of their eligibility for unemployment benefits,” **said Governor Murphy**. “This legislation will provide adjunct instructors and other employees the clarity they need to receive full unemployment benefits so they can get back on their feet.”

The bill will also require educational institution employers to inform the New Jersey Department of Labor of employees who do not have reasonable assurance of reemployment at least 10 days prior to the end of the academic term. The bill further requires an educational institution to notify the department of employees who have reasonable assurance of reemployment at least 10 days prior to the end of the academic term, and to provide a statement explaining the manner in which the employee was given a reasonable assurance of reemployment. The failure of an employer to meet the 10-day deadline will result in a rebuttable presumption that the employee does not have reasonable assurance of reemployment and is therefore eligible for unemployment benefits. These procedures will allow eligible claimants to receive benefits in a timely matter.

“The critical role of New Jersey’s teachers has never been more apparent than during the current public health crisis,” **said Labor Commissioner Robert Asaro-Angelo**. “We applaud Governor Murphy and the Legislature for improving educators’ access to benefits when the certainty of their job fluctuates from one school year to the next.”

“With colleges facing severe revenue losses and deep budget reductions, adjunct professors are often the first to be cut, and even those who have not been affected yet face uncertainty for the spring semester,” **said Senate President Steve Sweeney**. “They are experiencing the same economic hardship and anxiety as employees in other fields of work, and they deserve the same safeguards as everyone else. By allowing them to collect unemployment, we can help ensure they are able to support themselves and their families in any future shutdowns.”

“I am grateful the Governor sees the value in this legislation, our adjunct professors play an important role in educating students,” **said Senator Sandra Cunningham, the chair of the Senate Higher Education Committee**. “They should be treated fairly so they can support themselves and their families during this time of crisis. We need them to be able to return to the classroom when conditions allow. Our colleges and universities need them.”

“We are living in deeply uncertain times. It’s difficult for many employers – including colleges and universities– to give their employees complete assurance that their jobs will be waiting for them after an extended break,” **said Assemblywoman Joann Downey**. “Higher education staff should have the same access to unemployment insurance benefits as all other workers in New Jersey, particularly if there’s a chance they won’t be needed to teach the next semester.”

“Before COVID-19, many college professors could close their classroom doors at the end of the spring semester with the confidence that they’ll soon open those same doors again in the fall,” **said Assemblyman Jamel Holley**. “As the virus continues to tighten college budgets and force many schools to make cuts, the future feels far less certain. This new law will allow employees of education institutions to file for unemployment if they enter

a summer or holiday break without reasonable assurance that they will return, giving them time and peace of mind to plan their next steps.”

“Adjunct professors are among higher education’s most valuable employees, yet they are among the lowest paid,” **said AFTNJ President Donna M. Chiera**. “Thanks to Gov. Phil Murphy signing S2852/A4613, New Jersey adjuncts have access to the unemployment insurance benefit system that is essential to anyone who is out of work through no fault of their own.”

“The passage of this legislation is a perfect example of the positive change that can occur when you elect people who care about workers,” **said AFT President Randi Weingarten**. “Thank you, Gov. Phil Murphy, and the other pro-labor officials responsible for coming up with a solution to a problem that’s plagued part-time, non-tenured college and university educators for years.”

“This groundbreaking legislation provides greater clarity for the conditions under which education employees are eligible to collect, and it increases the likelihood that the evaluation of unemployment claims by this class of employees will be fair and equitable,” **said Dr. Susanna Tardi, AFTNJ Higher Education Executive Vice President**.

“We make up almost 75 percent of the faculty in higher education, and we need to have access to the same benefits as other public workers,” **said Bill Lipkin, Secretary/Treasurer for the United Adjunct Faculty of New Jersey (Local 2222)**. “Hopefully this law will simplify the process and allow adjunct faculty the right to survive when they are not employed.”