

# ASSEMBLY, No. 1874

## STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**

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**District 18 (Middlesex)**

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**SYNOPSIS**

Establishes standards regarding the disqualification of claimants for unemployment compensation for misconduct.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



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

3

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

6

7 1. R.S.43:21-5 is amended to read as follows:

8 43:21-5. An individual shall be disqualified for benefits:

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

22 (b) For the week in which the individual has been suspended or  
23 discharged for simple misconduct **[connected with the work]**, and  
24 for the seven weeks which immediately follow that week, as  
25 determined in each case. “Simple misconduct” means misconduct,  
26 other than severe or gross misconduct, which is improper,  
27 intentional, connected with the individual’s work, malicious, within  
28 the individual’s control, not a good faith error of judgment or  
29 discretion, and is either a deliberate failure, without good cause, to  
30 comply with the employer’s lawful and reasonable rules made  
31 known to the employee or a disregard of standards of behavior the  
32 employer has a reasonable right to expect, including reasonable  
33 safety standards and reasonable standards for a workplace free of  
34 drug and substance abuse. “Simple misconduct” includes: (1)  
35 repeated failure, without good cause, to comply with lawful,  
36 reasonable instructions of the employer not requiring the employee  
37 to perform services beyond the scope of the employee’s customary  
38 job duties; (2) falsification of an employment application or other  
39 record required by the employer to determine the employee’s  
40 qualifications or suitability for the job or omitting information  
41 which created a material misrepresentation of the employee’s  
42 qualifications or suitability for the job; (3) tardiness without good  
43 cause which is chronic or excessive and repeated after written  
44 warnings from the employer; and (4) repeated unauthorized  
45 absences without good cause, such as illness or other compelling

**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 personal circumstance, or unjustified failure to provide notice prior  
2 to the unauthorized absences. An unauthorized absence without  
3 good cause for five or more consecutive work days may constitute  
4 job abandonment and subject the individual to disqualification for  
5 voluntarily leaving work without good cause attributable to work  
6 pursuant to subsection (a) of this section. An individual's discharge  
7 for failure to meet the employer's standards regarding quality or  
8 quantity of work shall not be considered misconduct unless the  
9 employer demonstrates to the division that the standards are  
10 reasonable and that the individual deliberately performed below the  
11 standards.

12 For the week in which the individual has been suspended or  
13 discharged for severe misconduct connected with the individual's  
14 work, and for each week thereafter until the individual becomes  
15 reemployed and works four weeks in employment, which may  
16 include employment for the federal government, and has earned in  
17 employment at least six times the individual's weekly benefit rate,  
18 as determined in each case. [Examples of severe misconduct  
19 include, but are not necessarily limited to, the following: repeated  
20 violations of an employer's rule or policy, repeated lateness or  
21 absences after a written warning by an employer, falsification of  
22 records, physical assault or threats that do not constitute gross  
23 misconduct as defined in this section, misuse of benefits, misuse of  
24 sick time, abuse of leave, theft of company property, excessive use  
25 of intoxicants or drugs on work premises, theft of time, or where the  
26 behavior is malicious and deliberate but is not considered gross  
27 misconduct as defined in this section.] "Severe misconduct" means  
28 misconduct connected with the individual's work other than gross  
29 misconduct, which: (1) is committed with actual malice and  
30 deliberate disregard for property, safety or life of the employer, or  
31 fellow employees, contractors, invitees of the employer, or  
32 members of the public at the worksite, or consumers of the  
33 employer's products or services, and consists of physical assault,  
34 threats of physical assault, or theft or other employee-caused  
35 property or monetary loss or damage so serious that it is determined  
36 by the division that the penalties for simple misconduct are not  
37 sufficient; or (2) is comprised of a pattern of instances of simple  
38 misconduct which are, after repeated written warnings from the  
39 employer, repeated so frequently that they cause substantial  
40 disruption of the employer's operations or substantial property or  
41 monetary damage or loss for the employer which is so serious that it  
42 is determined by the division that the penalties for simple  
43 misconduct are not sufficient. Disruption of operations from a  
44 cessation of work during a labor dispute shall not be regarded as  
45 severe misconduct for the purposes of this subsection (b).

46 In the event the discharge should be rescinded by the employer  
47 voluntarily or as a result of mediation or arbitration, this subsection

1 (b) shall not apply, provided, however, an individual who is  
2 restored to employment with back pay shall return any benefits  
3 received under this chapter for any week of unemployment for  
4 which the individual is subsequently compensated by the employer.

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

13 The director shall insure that any appeal of a determination  
14 holding the individual disqualified for gross misconduct in  
15 connection with the work shall be expeditiously processed by the  
16 appeal tribunal.

17 To sustain disqualification under this subsection (b), the burden  
18 of proof is upon the employer, who shall provide written  
19 documentation, to show that the employee's actions constitute  
20 simple misconduct, serious misconduct, or gross misconduct.

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

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

43 (2) Notwithstanding any other provisions of this chapter, no  
44 work shall be deemed suitable and benefits shall not be denied  
45 under this chapter to any otherwise eligible individual for refusing  
46 to accept new work under any of the following conditions: the  
47 position offered is vacant due directly to a strike, lockout, or other

1 labor dispute; the remuneration, hours, or other conditions of the  
2 work offered are substantially less favorable to the individual than  
3 those prevailing for similar work in the locality; or, the individual,  
4 as a condition of being employed, would be required to join a  
5 company union or to resign from or refrain from joining any bona  
6 fide labor organization.

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

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

13 (a) The individual is not participating in or financing or directly  
14 interested in the labor dispute which caused the stoppage of work;  
15 and

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

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

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

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

44 (g) (1) For a period of one year from the date of the discovery by  
45 the division of the illegal receipt or attempted receipt of benefits  
46 contrary to the provisions of this chapter, as the result of any false  
47 or fraudulent representation; provided that any disqualification may

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (4) Medical documentation of the domestic violence;

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

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

37 For the purposes of this subsection (j):

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

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

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

23 (cf: P.L.2010, c.37, s.2)

24

25 2. This act shall take effect immediately.

26

27

28

## STATEMENT

29

30 This bill amends the current provisions of R.S.43:21-5 regarding  
31 disqualification from unemployment insurance (UI) benefits for  
32 misconduct by claimants. The bill retains the provisions of  
33 P.L.2010, c.37 that bar UI benefits in cases of "severe misconduct"  
34 by claimants and increase periods of disqualification from and  
35 requalification for benefits, but amends the law to clearly define  
36 "simple misconduct" and "severe misconduct" in a manner that  
37 provides fair treatment to laid off workers and clear, consistent  
38 procedural standards for employers, as follows:

39 1. The bill adds a definition of "simple misconduct" which  
40 codifies into statute the definition of "minor" misconduct found in  
41 existing regulations. The current UI statute has no definition at all  
42 of any misconduct other than "gross" (criminal) misconduct. To be  
43 regarded under the bill as "simple misconduct," behavior would  
44 have to be: improper; intentional; work-connected; malicious;  
45 within the individual's control; not a good faith error; and either a  
46 deliberate violation of the employer's lawful, reasonable rules made  
47 known to the employee, or a disregard of reasonable standards of



1 behavior. For example, for tardiness and absences to be regarded as  
2 simple misconduct under the bill, they must be repeated or chronic  
3 and without good cause, and unsatisfactory work performance must  
4 be deliberate and below reasonable standards.

5 2. The bill replaces the law's definition of "severe misconduct,"  
6 which is currently only a list of examples, with a comprehensive  
7 definition of "severe misconduct" as work-connected misconduct  
8 other than gross misconduct which either: (1) is committed with  
9 malice and deliberate disregard for the property, safety or life of  
10 people at the worksite or consumers, and consists of violence,  
11 threats, theft, or other employee-caused, substantial property or  
12 monetary loss; or (2) is comprised of a pattern of instances of  
13 simple misconduct which are, after written employer warnings,  
14 repeated so frequently that they cause substantial property damage  
15 or disruption of employer operations.

16 3. The bill adds to the UI statute the requirement found in  
17 existing regulations that the burden of proof is on the employer to  
18 demonstrate that employee actions constitute misconduct, and adds  
19 a requirement not in the current or proposed regulations that the  
20 employer must provide written documentation.