

[First Reprint]

**ASSEMBLY, No. 3871**

**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

INTRODUCED MAY 7, 2018

**Sponsored by:**

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**District 31 (Hudson)**

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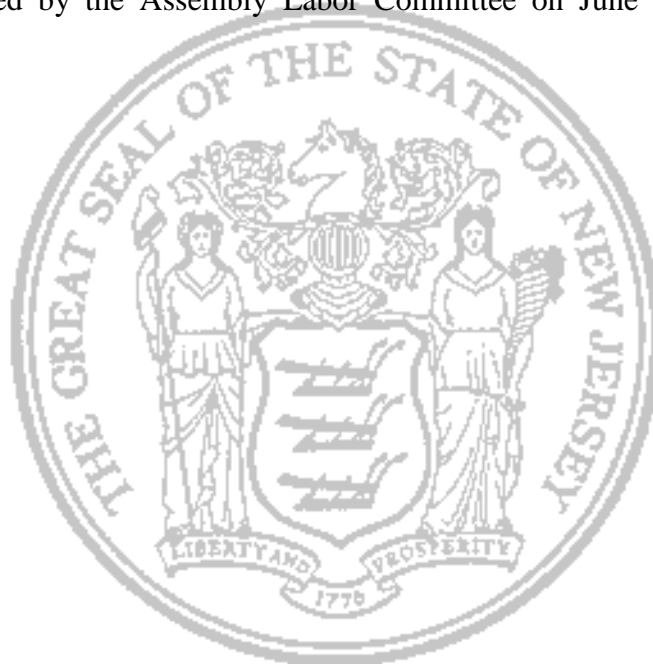
**District 5 (Camden and Gloucester)**

**SYNOPSIS**

Concerns disqualification from unemployment benefits for misconduct.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Labor Committee on June 18, 2018, with amendments.



**(Sponsorship Updated As Of: 6/26/2018)**

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

3

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

6

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

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

9 (a) For the week in which the individual has left work  
10 voluntarily without good cause attributable to such work, and for  
11 each week thereafter until the individual becomes reemployed and  
12 works eight weeks in employment, which may include employment  
13 for the federal government, and has earned in employment at least  
14 ten times the individual's weekly benefit rate, as determined in each  
15 case. This subsection shall apply to any individual seeking  
16 unemployment benefits on the basis of employment in the  
17 production and harvesting of agricultural crops, including any  
18 individual who was employed in the production and harvesting of  
19 agricultural crops on a contract basis and who has refused an offer  
20 of continuing work with that employer following the completion of  
21 the minimum period of work required to fulfill the contract. This  
22 subsection shall not apply to an individual who voluntarily leaves  
23 work with one employer to accept from another employer  
24 employment which commences not more than seven days after the  
25 individual leaves employment with the first employer, if the  
26 employment with the second employer has weekly hours or pay not  
27 less than the hours or pay of the employment of the first employer,  
28 except that if the individual gives notice to the first employer that  
29 the individual will leave employment on a specified date and the  
30 first employer terminates the individual before that date, the seven-  
31 day period will commence from the specified date.

32 (b) For the week in which the individual has been suspended or  
33 discharged for misconduct connected with the work, and for the  
34 **[seven]** five weeks which immediately follow that week, as  
35 determined in each case.

36 **[For the week in which the individual has been suspended or**  
37 **discharged for severe misconduct connected with the work, and for**  
38 **each week thereafter until the individual becomes reemployed and**  
39 **works four weeks in employment, which may include employment**  
40 **for the federal government, and has earned in employment at least**  
41 **six times the individual's weekly benefit rate, as determined in each**  
42 **case. Examples of severe misconduct include, but are not**  
43 **necessarily limited to, the following: repeated violations of an**  
44 **employer's rule or policy, repeated lateness or absences after a**

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

**<sup>1</sup>Assembly ALA committee amendments adopted June 18, 2018.**

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

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

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

44 If the discharge was for gross misconduct connected with the  
45 work because of the commission of an act punishable as a crime of  
46 the first, second, third or fourth degree under the "New Jersey Code  
47 of Criminal Justice," N.J.S.2C:1-1 et seq., the individual shall be

1 disqualified in accordance with the disqualification prescribed in  
2 subsection (a) of this section and no benefit rights shall accrue to  
3 any individual based upon wages from that employer for services  
4 rendered prior to the day upon which the individual was discharged.

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

9 To sustain disqualification from benefits because of misconduct  
10 under this subsection (b), the burden of proof is upon the employer,  
11 who shall, prior to <sup>1</sup>[any] a<sup>1</sup> determination <sup>1</sup>[of] by<sup>1</sup> the <sup>1</sup>[division  
12 regarding] department of<sup>1</sup> misconduct, provide <sup>1</sup>written<sup>1</sup>  
13 documentation <sup>1</sup>[, written at or immediately following the time of  
14 the misconduct,]<sup>1</sup> demonstrating that the employee's actions  
15 constitute <sup>1</sup>[simple]<sup>1</sup> misconduct or gross misconduct.

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

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  
45 by 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  
48 be appealed in the same manner as any other disqualification

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

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

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

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

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

1 holiday recesses at the educational institution, to establish a claim  
2 for benefits. For purposes of this subsection, an individual shall be  
3 treated as a full-time student for any period:

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

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

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

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

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

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

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

27 (4) Medical documentation of the domestic violence;

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

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

35 For the purposes of this subsection (j):

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

47 (k) Notwithstanding any other provisions of this chapter  
48 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be

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

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

21

22 2. This act shall take effect immediately.