

ASSEMBLY, No. 2718

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

SYNOPSIS

Provides that certain employees of educational institutions are eligible for unemployment benefits under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning unemployment benefits and employees of
2 educational institutions 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 with the individual, and the
23 individual would be eligible to receive benefits under R.S.43:21-1
24 et seq. (without regard to the maximum amount of benefits payable
25 during any benefit year) except for the individual's unavailability
26 for work while taking the family temporary disability leave, and the
27 individual has furnished notice and proof of claim to the division, in
28 accordance with its rules and regulations, and payment is not
29 precluded by the provisions of R.S.43:21-3(d) provided, however,
30 that benefits paid under this subsection (f) shall be computed on the
31 basis of only those base year wages earned by the claimant as a
32 "covered individual," as defined in subsection (b) of section 3 of
33 P.L.1948, c.110 (C.43:21-27); provided further that no benefits
34 shall be payable under this subsection to any individual:

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

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

46 (C) For any period of family temporary disability leave
47 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) As used in this subsection:

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

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

38 An individual who is tenured or holds tenure track status is
39 considered to have reasonable assurance, unless advised otherwise
40 by the college. For the purposes of this subsection, tenure track
41 status means a probationary faculty employee having an opportunity
42 to be reviewed for tenure.

43 In the case of community and technical colleges assigned the
44 Standard Industrial Classification code 8222 or the North American
45 Industry Classification System code 611210 for services performed
46 in a principal administrative, research, or instructional capacity, a
47 person is presumed not to have reasonable assurance under an offer
48 that is conditioned on enrollment, funding, or program changes. It

1 is the college's burden to provide sufficient documentation to
2 overcome this presumption. Reasonable assurance shall be
3 determined on a case-by-case basis by the total weight of evidence
4 rather than the existence of any one factor. Primary weight shall be
5 given to the contingent nature of an offer of employment based on
6 enrollment, funding, and program changes.

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

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

34 (2) Any data or information required of individuals applying for
35 benefits to determine whether benefits are not payable to them
36 because of their alien status shall be uniformly required from all
37 applicants for benefits.

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

42 (j) Notwithstanding any other provision of this chapter, the
43 director may, to the extent that it may be deemed efficient and
44 economical, provide for consolidated administration by one or more
45 representatives or deputies of claims made pursuant to subsection
46 (f) of this section with those made pursuant to Article III (State

1 plan) of the "Temporary Disability Benefits Law," P.L.1948, c.110
2 (C.43:21-25 et al.).
3 (cf: P.L.2011, c.154, s.11)
4

5 2. This act shall take effect on the 30th day next following
6 enactment.
7

8

9

STATEMENT

10

11 This bill provides that certain employees of educational
12 institutions may not be denied unemployment benefits when those
13 employees are denied employment during the summer semester or
14 term.

15 Under current law, unemployment benefits are not paid to
16 employees of educational institutions for any week which
17 commences during an established and customary vacation period or
18 holiday recess if the employee works in the period immediately
19 before the vacation or holiday recess, and there is a reasonable
20 assurance that the employee will work in the period immediately
21 following the vacation or holiday recess. "Established and
22 customary vacation period or holiday recess" has been interpreted
23 to include the summer, even in cases where the educational
24 institution is in session during the summer, and has a summer
25 semester or term.

26 This bill provides that the summer may not be considered an
27 established and customary vacation period or holiday recess for
28 purposes of determining unemployment benefits eligibility, unless
29 based on objective criteria including enrollment and staffing, the
30 summer is not in fact a part of the academic year for a particular
31 institution.

32 The bill also provides that "reasonable assurance" means a
33 written, verbal, or implied agreement that the employee will
34 perform services in the same capacity during the ensuing academic
35 year or term as in the first academic year or term. Under the bill, a
36 person is not deemed to be performing services "in the same
37 capacity" unless those services are rendered under the same terms
38 or conditions of employment in the ensuing year as in the first
39 academic year or term.