

# ASSEMBLY, No. 4534

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED AUGUST 13, 2020

**Sponsored by:**

**Assemblyman GORDON M. JOHNSON**

**District 37 (Bergen)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

**Assemblymen Verrelli, Mazzeo and Armato**

**SYNOPSIS**

Provides that effective date of unemployment claim is date on which individual becomes unemployed.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 10/22/2020)**

1 AN ACT concerning the effective date of unemployment claims and  
2 amending R.S.43:21-6.

3

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

6

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

8 43:21-6. (a) Filing. (1) Claims for benefits shall be made in  
9 accordance with such regulations as the Director of the Division of  
10 Unemployment and Temporary Disability Insurance of the  
11 Department of Labor and Workforce Development of the State of  
12 New Jersey may approve. Each employer shall post and maintain  
13 on his premises printed notices of his subject status, of such design,  
14 in such numbers and at such places as the director of the division  
15 may determine to be necessary to give notice thereof to persons in  
16 the employer's service. Each employer shall give to each individual  
17 at the time he becomes unemployed, for any reason, whether the  
18 unemployment is permanent or temporary, a printed copy of benefit  
19 instructions. The benefit instructions given to the individual shall  
20 include, but not be limited to, the following information: **[(A)]** the  
21 date upon which the individual becomes unemployed, and, in the  
22 case that the unemployment is temporary, to the extent possible, the  
23 date upon which the individual is expected to be recalled to work**];**  
24 and (B) that the individual may lose some or all of the benefits to  
25 which he is entitled if he fails to file a claim in a timely manner**].**  
26 Both the aforesaid notices and instructions**],** including information  
27 detailing the time sensitivity of filing a claim,**]** shall be supplied by  
28 the division to employers without cost to them. Nothing in this  
29 section shall be construed so as to require an employer to re-hire an  
30 individual formerly in the employer's service.

31 (2) Any claimant may choose to certify, cancel or close his  
32 claim for unemployment insurance benefits at any time, 24 hours a  
33 day and seven days a week, via the Internet on a website developed  
34 by the division; however, any claim that is certified, cancelled or  
35 closed after 7:00 PM will not be processed by the division until the  
36 next scheduled posting date. The date on which a claimant becomes  
37 unemployed, or, with respect to the eligibility of partial benefits, the  
38 date on which a claimant experiences a reduction in work hours due  
39 to a lack of available work, shall be the effective date of the  
40 claimant's claim, and the claimant shall be entitled to benefits from  
41 the date of unemployment or reduction of work hours. A claimant's  
42 failure to file a claim within a certain period of time shall not  
43 disqualify a claimant from receiving benefits as of the date of  
44 unemployment or reduced work hours, except that the claimant is  
45 not entitled to unemployment benefits as of the commencement of

**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 unemployment or reduced work hours if the claimant waits to file  
2 for unemployment benefits more than 180 days after becoming  
3 unemployed or experiencing a reduction in work hours. If the  
4 claimant files a claim for unemployment benefits after 180 days  
5 have passed since becoming unemployed or experiencing a  
6 reduction in work hours, the effective date of the claim shall be the  
7 date of filing.

8 (b) (1) Procedure for making initial determinations with respect  
9 to benefit years commencing on or after January 1, 1953.

10 A representative or representatives designated by the director of  
11 the division and hereafter referred to as a "deputy" shall promptly  
12 examine the claim, and shall notify the most recent employing unit  
13 and, successively as necessary, each employer in inverse  
14 chronological order during the base year. Such notification shall  
15 require said employing unit and employer to furnish such  
16 information to the deputy as may be necessary to determine the  
17 claimant's eligibility and his benefit rights with respect to the  
18 employer in question.

19 In his discretion, the director may appoint special deputies to  
20 make initial or subsequent determinations under subsection (f) of  
21 R.S.43:21-4 and subsection (d) of R.S.43:21-5.

22 If any employer or employing unit fails to respond to the request  
23 for information within 10 days after the mailing, or communicating  
24 by electronic means, of such request, the deputy shall rely entirely  
25 on information from other sources, including an affidavit to the best  
26 of the knowledge and belief of the claimant with respect to his  
27 wages and time worked. Except in the event of fraud, if it is  
28 determined that any information in such affidavit is erroneous, no  
29 penalty shall be imposed on the claimant.

30 The deputy shall make an initial determination contingent upon  
31 the receipt of all necessary information and notify the claimant no  
32 later than three weeks from the date on which the division received  
33 the claim for benefits. If an initial determination cannot be made  
34 due to the lack of documentation, notification will be sent to the  
35 claimant providing a status of the claim. The division will then  
36 have an additional two weeks to obtain the missing information in  
37 order to make the initial determination and advise the claimant  
38 accordingly. The initial determination shall show the weekly  
39 benefit amount payable, the maximum duration of benefits with  
40 respect to the employer to whom the determination relates, and the  
41 ratio of benefits chargeable to the employer's account for benefit  
42 years commencing on or after July 1, 1986, and also shall show  
43 whether the claimant is ineligible or disqualified for benefits under  
44 the initial determination. The employer whose account may be  
45 charged for benefits payable pursuant to said determination shall be  
46 promptly notified thereof.

47 Whenever an initial determination is based upon information  
48 other than that supplied by an employer because such employer

1 failed to respond to the deputy's request for information, such initial  
2 determination and any subsequent determination thereunder shall be  
3 incontestable by the noncomplying employer, as to any charges to  
4 his employer's account because of benefits paid prior to the close of  
5 the calendar week following the receipt of his reply. Such initial  
6 determination shall be altered if necessary upon receipt of  
7 information from the employer, and any benefits paid or payable  
8 with respect to weeks occurring subsequent to the close of the  
9 calendar week following the receipt of the employer's reply shall be  
10 paid in accordance with such altered initial determination.

11 The deputy shall issue a separate initial benefit determination  
12 with respect to each of the claimant's base year employers, starting  
13 with the most recent employer and continuing as necessary in the  
14 inverse chronological order of the claimant's last date of  
15 employment with each such employer. If an appeal is taken from  
16 an initial determination, as hereinafter provided, by any employer  
17 other than the first chargeable base year employer or for benefit  
18 years commencing on or after July 1, 1986, that employer from  
19 whom the individual was most recently separated, then such appeal  
20 shall be limited in scope to include only one or more of the  
21 following matters:

22 (A) The correctness of the benefit payments authorized to be  
23 made under the determination;

24 (B) Fraud in connection with the claim pursuant to which the  
25 initial determination is issued;

26 (C) The refusal of suitable work offered by the chargeable  
27 employer filing the appeal;

28 (D) Gross misconduct as provided in subsection (b) of  
29 R.S.43:21-5.

30 The amount of benefits payable under an initial determination  
31 may be reduced or canceled if necessary to avoid payment of  
32 benefits for a number of weeks in excess of the maximum specified  
33 in subsection (d) of R.S.43:21-3.

34 Unless the claimant or any interested party, within seven  
35 calendar days after delivery of notification of an initial  
36 determination or within 10 calendar days after such notification was  
37 mailed to his or their last-known address and addresses, files an  
38 appeal from such decision, such decision shall be final and benefits  
39 shall be paid or denied in accordance therewith, except for such  
40 determinations as may be altered in benefit amounts or duration as  
41 provided in this paragraph. Benefits payable for periods pending an  
42 appeal and not in dispute shall be paid as such benefits accrue;  
43 provided that insofar as any such appeal is or may be an appeal  
44 from a determination to the effect that the claimant is disqualified  
45 under the provisions of R.S.43:21-5 or any amendments thereof or  
46 supplements thereto, benefits pending determination of the appeal  
47 shall be withheld only for the period of disqualification as provided  
48 for in said section, and notwithstanding such appeal, the benefits

1 otherwise provided by this act shall be paid for the period  
2 subsequent to such period of disqualification; and provided, also,  
3 that if there are two determinations of entitlement, benefits for the  
4 period covered by such determinations shall be paid regardless of  
5 any appeal which may thereafter be taken, but no employer's  
6 account shall be charged with benefits so paid, if the decision is  
7 finally reversed.

8 (2) Procedure for making initial determinations in certain cases  
9 of concurrent employment, with respect to benefit years  
10 commencing on or after January 1, 1953 and prior to benefit years  
11 commencing on or after July 1, 1986.

12 Notwithstanding any other provisions of this Title, if an  
13 individual shows to the satisfaction of the deputy that there were at  
14 least 13 weeks in his base period in each of which he earned wages  
15 from two or more employers totaling \$30.00 or more but in each of  
16 which there was no single employer from whom he earned as much  
17 as \$100.00, then such individual's claim shall be determined in  
18 accordance with the special provisions of this paragraph. In such  
19 case, the deputy shall determine the individual's eligibility for  
20 benefits, his average weekly wage, weekly benefit rate and  
21 maximum total benefits as if all his base year employers were a  
22 single employer. Such determination shall apportion the liability  
23 for benefit charges thereunder to the individual's several base year  
24 employers so that each employer's maximum liability for charges  
25 thereunder bears approximately the same relation to the maximum  
26 total benefits allowed as the wages earned by the individual from  
27 each employer during the base year bears to his total wages earned  
28 from all employers during the base year. Such initial determination  
29 shall also specify the individual's last date of employment within  
30 the base year with respect to each base year employer, and such  
31 employers shall be charged for benefits paid under said initial  
32 determination in the inverse chronological order of such last date of  
33 employment.

34 (3) Procedure for making subsequent determinations with  
35 respect to benefit years commencing on or after January 1, 1953.  
36 The deputy shall make determinations with respect to claims for  
37 benefits thereafter in the course of the benefit year, in accordance  
38 with any initial determination allowing benefits, and under which  
39 benefits have not been exhausted, and each notification of a benefit  
40 payment shall be a notification of an affirmative subsequent  
41 determination. The allowance of benefits by the deputy on any such  
42 determination, or the denial of benefits by the deputy on any such  
43 determination, shall be appealable in the same manner and under  
44 the same limitations as is provided in the case of initial  
45 determinations.

46 (c) Appeals. Unless such appeal is withdrawn, an appeal  
47 tribunal, after affording the parties reasonable opportunity for fair  
48 hearing, shall affirm or modify the findings of fact and the

1 determination. The parties shall be duly notified of such tribunal's  
2 decision, together with its reasons therefor, which shall be deemed  
3 to be the final decision of the board of review, unless further appeal  
4 is initiated pursuant to subsection (e) of this section within 10 days  
5 after the date of notification or mailing of the decision for any  
6 decision made on or before December 1, 2010, or within 20 days  
7 after the date of notification or mailing of such decision for any  
8 decision made after December 1, 2010.

9 (d) Appeal tribunals. To hear and decide disputed benefit  
10 claims, including appeals from determinations with respect to  
11 demands for refunds of benefits under subsection (d) of R.S.43:21-  
12 16, the director with the approval of the Commissioner of Labor and  
13 Workforce Development shall establish impartial appeal tribunals  
14 consisting of a salaried body of examiners under the supervision of  
15 a Chief Appeals Examiner, all of whom shall be appointed pursuant  
16 to the provisions of Title 11A of the New Jersey Statutes, Civil  
17 Service and other applicable statutes.

18 (e) Board of review. The board of review may on its own  
19 motion affirm, modify, or set aside any decision of an appeal  
20 tribunal on the basis of the evidence previously submitted in such  
21 case, or direct the taking of additional evidence, or may permit any  
22 of the parties to such decision to initiate further appeals before it.  
23 The board of review shall permit such further appeal by any of the  
24 parties interested in a decision of an appeal tribunal which is not  
25 unanimous and from any determination which has been overruled or  
26 modified by any appeal tribunal. The board of review may remove  
27 to itself or transfer to another appeal tribunal the proceedings on  
28 any claim pending before an appeal tribunal. Any proceedings so  
29 removed to the board of review shall be heard by a quorum thereof  
30 in accordance with the requirements of subsection (c) of this  
31 section. The board of review shall promptly notify the interested  
32 parties of its findings and decision.

33 (f) Procedure. The manner in which disputed benefit claims,  
34 and appeals from determinations with respect to (1) claims for  
35 benefits and (2) demands for refunds of benefits under subsection  
36 (d) of R.S.43:21-16 shall be presented, the reports thereon required  
37 from the claimant and from employers, and the conduct of hearings  
38 and appeals shall be in accordance with rules prescribed by the  
39 board of review for determining the rights of the parties, whether or  
40 not such rules conform to common law or statutory rules of  
41 evidence and other technical rules of procedure. A full and  
42 complete record shall be kept of all proceedings in connection with  
43 a disputed claim. All testimony at any hearing upon a disputed  
44 claim shall be recorded, but need not be transcribed unless the  
45 disputed claim is further appealed.

46 (g) Witness fees. Witnesses subpoenaed pursuant to this section  
47 shall be allowed fees at a rate fixed by the director. Such fees and  
48 all expenses of proceedings involving disputed claims shall be

1 deemed a part of the expense of administering this chapter  
2 (R.S.43:21-1 et seq.).

3 (h) Court review. Any decision of the board of review shall  
4 become final as to any party upon the mailing of a copy thereof to  
5 such party or to his attorney, or upon the mailing of a copy thereof  
6 to such party at his last-known address. The Division of  
7 Unemployment and Temporary Disability Insurance and any party  
8 to a proceeding before the board of review may secure judicial  
9 review of the final decision of the board of review. Any party not  
10 joining in the appeal shall be made a defendant; the board of review  
11 shall be deemed to be a party to any judicial action involving the  
12 review of, or appeal from, any of its decisions, and may be  
13 represented in any such judicial action by any qualified attorney,  
14 who may be a regular salaried employee of the board of review or  
15 has been designated by it for that purpose, or, at the board of  
16 review's request, by the Attorney General.

17 (i) Failure to give notice. The failure of any public officer or  
18 employee at any time heretofore or hereafter to give notice of  
19 determination or decision required in subsections (b), (c) and (e) of  
20 this section, as originally passed or amended, shall not relieve any  
21 employer's account of any charge by reason of any benefits paid,  
22 unless and until that employer can show to the satisfaction of the  
23 director of the division that the said benefits, in whole or in part,  
24 would not have been charged or chargeable to his account had such  
25 notice been given. Any determination hereunder by the director  
26 shall be subject to court review.

27 (j) With respect to benefit payments made on or after October  
28 22, 2013, an employer's account shall not be relieved of charges  
29 related to a benefit payment that was made erroneously from the  
30 division if it is determined that:

31 (1) The erroneous benefit payment was made because the  
32 employer, or an agent of the employer, failed to respond in a timely  
33 or adequate manner to a request from the division for information  
34 related to the claim for benefits; and

35 (2) The employer, or an agent of the employer, has established a  
36 pattern of failing to respond in a timely or adequate manner to  
37 requests from the division for information related to claims for  
38 benefits.

39 Determinations of the division prohibiting the relief of charges  
40 pursuant to this subsection shall be subject to appeal in the same  
41 manner as other determinations of the division related to the  
42 charging of employer accounts.

43 For purposes of subsection (j) of this section:

44 "Erroneous benefit payment" means a benefit payment that,  
45 except for the failure by the employer, or an agent of the employer,  
46 to respond in a timely or adequate manner to a request from the  
47 division for information with respect to the claim for benefits,  
48 would not have been made; and

1 "Pattern of failing" means repeated documented failure on the  
2 part of the employer, or an agent of the employer, to respond to  
3 requests from the division to the employer or employer's agent for  
4 information related to a claim for benefits, except that an employer,  
5 or an agent of an employer, shall not be determined to have engaged  
6 in a "pattern of failing" if the number of failures to respond to  
7 requests from the division for information related to claims for  
8 benefits during the previous 365 calendar days is less than three, or  
9 if the number of failures is less than two percent of the number of  
10 requests from the division, whichever is greater.

11 (k) The Department of Labor and Workforce Development shall  
12 establish and maintain a procedure by which personnel access rights  
13 to the department's primary system for unemployment claims  
14 receipt and processing are comprehensively reviewed every  
15 calendar quarter. The procedure shall include an evaluation of  
16 access needs to the primary unemployment claims receipt and  
17 processing system for all department personnel and the adjustment,  
18 addition, or deletion of access rights for department personnel based  
19 on the quarterly review.

20 (l) Provided that a determination has not been made within  
21 sixty days of the date of filing of claimant's claim, the claimant  
22 shall be entitled to the maximum weekly benefit as specified under  
23 subsection (d) of R.S.43:21-3, plus any additional benefits granted  
24 at the time the claim is processed, including any State or federal  
25 extension of unemployment compensation benefits, until the  
26 determination is made.

27 Each week of benefits paid to a claimant shall be charged against  
28 the individual's maximum benefit weeks.

29 (m) If the division determines that the claimant, whose weekly  
30 benefit wages is paid pursuant to subsection (l) of this section, is  
31 not eligible for unemployment, the division shall not be entitled to  
32 any of the amount previously paid to that claimant.

33 (cf: P.L.2017, c.163, s.1)

34

35 2. This act shall take effect immediately and shall be  
36 retroactive to all claims filed on or after March 1, 2020.

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38

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#### STATEMENT

40

41 This bill provides that the effective date of a claim for  
42 unemployment benefits will be the date on which an individual  
43 becomes unemployed or experiences a reduction in work hours,  
44 unless the claimant waits to file for unemployment benefits more  
45 than 180 days after becoming unemployed or experiencing a  
46 reduction in work hours. If the claimant files a claim for  
47 unemployment after 180 days have passed since becoming



1 unemployed or experiencing a reduction in work hours, the  
2 effective date of the claim will be the date of filing.

3 Currently, regulations provide that the date of an individual's  
4 claim for benefits is the Sunday prior to the week that the individual  
5 files for unemployment benefits. Consequently, an individual who  
6 does not file for unemployment benefits in the week the individual  
7 becomes unemployed will lose benefits for which the individual  
8 would otherwise be eligible.

9 The bill also provides that if a determination is not made within  
10 sixty days of the date of filing of claimant's claim, the claimant will  
11 be entitled to the maximum weekly benefit under the law.

12 The bill provides that if, after sixty days have passed, the  
13 division determines that the claimant is not eligible for  
14 unemployment, the division will not be entitled to any of the money  
15 previously paid to that claimant.

16 Each week of benefits paid to a claimant shall be charged against  
17 the individual's maximum benefit weeks.

18 The bill will be retroactive to all claims filed on or after March  
19 1, 2020.