

[First Reprint]

ASSEMBLY, No. 4534

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED AUGUST 13, 2020

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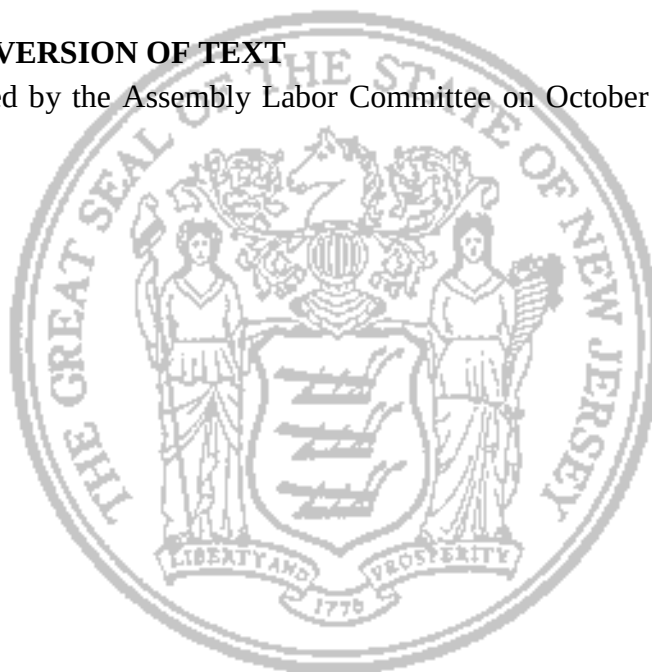
Assemblymen Verrelli, Mazzeo and Armato

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Labor Committee on October 22, 2020, with amendments.



(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

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:

¹Assembly ALA committee amendments adopted October 22, 2020.

1 not entitled to unemployment benefits as of the commencement of
2 unemployment or reduced work hours if the claimant waits to file
3 for unemployment benefits more than 180 days after becoming
4 unemployed or experiencing a reduction in work hours. If the
5 claimant files a claim for unemployment benefits after 180 days
6 have passed since becoming unemployed or experiencing a
7 reduction in work hours, the effective date of the claim shall be the
8 date of filing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) Appeals. Unless such appeal is withdrawn, an appeal
2 tribunal, after affording the parties reasonable opportunity for fair
3 hearing, shall affirm or modify the findings of fact and the
4 determination. The parties shall be duly notified of such tribunal's
5 decision, together with its reasons therefor, which shall be deemed
6 to be the final decision of the board of review, unless further appeal
7 is initiated pursuant to subsection (e) of this section within 10 days
8 after the date of notification or mailing of the decision for any
9 decision made on or before December 1, 2010, or within 20 days
10 after the date of notification or mailing of such decision for any
11 decision made after December 1, 2010.

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

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

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

1 (g) Witness fees. Witnesses subpoenaed pursuant to this section
2 shall be allowed fees at a rate fixed by the director. Such fees and
3 all expenses of proceedings involving disputed claims shall be
4 deemed a part of the expense of administering this chapter
5 (R.S.43:21-1 et seq.).

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

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

30 (j) With respect to benefit payments made on or after October
31 22, 2013, an employer's account shall not be relieved of charges
32 related to a benefit payment that was made erroneously from the
33 division if it is determined that:

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

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

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

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

47 "Erroneous benefit payment" means a benefit payment that,
48 except for the failure by the employer, or an agent of the employer,

1 to respond in a timely or adequate manner to a request from the
2 division for information with respect to the claim for benefits,
3 would not have been made; and

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

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

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

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

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

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

37
38 2. This act shall take effect ¹immediately and shall be
39 retroactive to all claims filed on or after March 1, 2020 **on**
40 February 1, 2021 and shall apply to all claims filed on or after
41 that date¹.