

SENATE, No. 811

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator MICHAEL L. TESTA, JR.

District 1 (Atlantic, Cape May and Cumberland)

SYNOPSIS

Concerns eligibility for unemployment compensation benefits for certain seasonal employees.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



S811 TESTA

2

1 AN ACT concerning benefit eligibility for unemployment
2 compensation 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 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 division
39 may prescribe, an individual, who is otherwise eligible, shall not be
40 deemed unavailable for work or ineligible because the individual is
41 attending a training program approved for the individual by the
42 division to enhance the individual's employment opportunities or
43 because the individual failed or refused to accept work while
44 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 (ii) The training is provided by a competent and reliable private
7 or public entity approved by the Commissioner of Labor and
8 Workforce Development pursuant to the provisions of section 8 of
9 the "1992 New Jersey Employment and Workforce Development
10 Act," P.L.1992, c.43 (C.34:15D-8);

11 (iii) The individual can reasonably be expected to complete the
12 program, either during or after the period of benefits;

13 (iv) The training does not include on the job training or other
14 training under which the individual is paid by an employer for work
15 performed by the individual during the time that the individual
16 receives benefits; and

17 (v) The individual enrolls in vocational training, remedial
18 education or a combination of both on a full-time basis.

19 (C) If the requirements of subparagraph (B) of this paragraph (4)
20 are met, the division shall not withhold approval of the training
21 program for the individual for any of the following reasons:

22 (i) The training includes remedial basic skills education
23 necessary for the individual to successfully complete the vocational
24 component of the training;

25 (ii) The training is provided in connection with a program under
26 which the individual may obtain a college degree, including a post-
27 graduate degree;

28 (iii) The length of the training period under the program; or

29 (iv) The lack of a prior guarantee of employment upon
30 completion of the training.

31 (D) For the purpose of this paragraph (4), "labor demand
32 occupation" means an occupation for which there is or is likely to
33 be an excess of demand over supply for adequately trained workers,
34 including, but not limited to, an occupation designated as a labor
35 demand occupation by the Center for Occupational Employment
36 Information pursuant to the provisions of subsection d. of section
37 27 of P.L.2005, c.354 (C.34:1A-86).

38 (5) An unemployed individual, who is otherwise eligible, shall
39 not be deemed unavailable for work or ineligible solely by reason of
40 the individual's attendance before a court in response to a summons
41 for service on a jury.

42 (6) An unemployed individual, who is otherwise eligible, shall
43 not be deemed unavailable for work or ineligible solely by reason of
44 the individual's attendance at the funeral of an immediate family
45 member, provided that the duration of the attendance does not
46 extend beyond a two-day period.

47 For purposes of this paragraph, "immediate family member"
48 includes any of the following individuals: father, mother, mother-

1 in-law, father-in-law, grandmother, grandfather, grandchild, spouse,
2 child, child placed by the Division of Youth and Family Services in
3 the Department of Children and Families, sister or brother of the
4 unemployed individual and any relatives of the unemployed
5 individual residing in the unemployed individual's household.

6 (7) No individual, who is otherwise eligible, shall be deemed
7 ineligible or unavailable for work with respect to any week because,
8 during that week, the individual fails or refuses to accept work
9 while the individual is participating on a full-time basis in self-
10 employment assistance activities authorized by the division,
11 whether or not the individual is receiving a self-employment
12 allowance during that week.

13 (8) Any individual who is determined to be likely to exhaust
14 regular benefits and need reemployment services based on
15 information obtained by the worker profiling system shall not be
16 eligible to receive benefits if the individual fails to participate in
17 available reemployment services to which the individual is referred
18 by the division or in similar services, unless the division determines
19 that:

20 (A) The individual has completed the reemployment services; or
21 (B) There is justifiable cause for the failure to participate, which
22 shall include participation in employment and training, self-
23 employment assistance activities or other activities authorized by
24 the division to assist reemployment or enhance the marketable skills
25 and earning power of the individual and which shall include any
26 other circumstance indicated pursuant to this section in which an
27 individual is not required to be available for and actively seeking
28 work to receive benefits.

29 (9) An unemployed individual, who is otherwise eligible, shall
30 not be deemed unavailable for work or ineligible solely by reason of
31 the individual's work as a board worker for a county board of
32 elections on an election day.

33 (d) With respect to any benefit year commencing before January
34 1, 2002, the individual has been totally or partially unemployed for
35 a waiting period of one week in the benefit year which includes that
36 week. When benefits become payable with respect to the third
37 consecutive week next following the waiting period, the individual
38 shall be eligible to receive benefits as appropriate with respect to
39 the waiting period. No week shall be counted as a week of
40 unemployment for the purposes of this subsection:

41 (1) If benefits have been paid, or are payable with respect
42 thereto; provided that the requirements of this paragraph shall be
43 waived with respect to any benefits paid or payable for a waiting
44 period as provided in this subsection;

45 (2) If it has constituted a waiting period week under the
46 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
47 et al.);

1 (3) Unless the individual fulfills the requirements of subsections
2 (a) and (c) of this section;

3 (4) If with respect thereto, claimant was disqualified for benefits
4 in accordance with the provisions of subsection (d) of R.S.43:21-5.

5 **【The waiting period provided by this subsection shall not apply**
6 **to benefit years commencing on or after January 1, 2002. An**
7 **individual whose total benefit amount was reduced by the**
8 **application of the waiting period to a claim which occurred on or**
9 **after January 1, 2002 and before the effective date of P.L.2002,**
10 **c.13, shall be permitted to file a claim for the additional benefits**
11 **attributable to the waiting period in the form and manner prescribed**
12 **by the division, but not later than the 180th day following the**
13 **effective date of P.L.2002, c.13 unless the division determines that**
14 **there is good cause for a later filing.】**

15 (e) (1) (Deleted by amendment, P.L.2001, c.17).

16 (2) (Deleted by amendment, P.L.2008, c.17).

17 (3) (Deleted by amendment, P.L.2008, c.17).

18 (4) With respect to benefit years commencing on or after
19 January 7, 2001, except as otherwise provided in paragraph (5) of
20 this subsection, the individual has, during his base year as defined
21 in subsection (c) of R.S.43:21-19:

22 (A) Established at least 20 base weeks as defined in paragraphs
23 (2) and (3) of subsection (t) of R.S.43:21-19; or

24 (B) If the individual has not met the requirements of
25 subparagraph (A) of this paragraph (4), earned remuneration not
26 less than an amount 1,000 times the minimum wage in effect
27 pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October
28 1 of the calendar year preceding the calendar year in which the
29 benefit year commences, which amount shall be adjusted to the next
30 higher multiple of \$100 if not already a multiple thereof.

31 (5) With respect to benefit years commencing on or after
32 January 7, 2001, notwithstanding the provisions of paragraph (4) of
33 this subsection, an unemployed individual claiming benefits on the
34 basis of service performed in the production and harvesting of
35 agricultural crops shall, subject to the limitations of subsection (i)
36 of R.S.43:21-19, be eligible to receive benefits if during his base
37 year, as defined in subsection (c) of R.S.43:21-19, the individual:

38 (A) Has established at least 20 base weeks as defined in
39 paragraphs (2) and (3) of subsection (t) of R.S.43:21-19; or

40 (B) Has earned remuneration not less than an amount 1,000
41 times the minimum wage in effect pursuant to section 5 of
42 P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year
43 preceding the calendar year in which the benefit year commences,
44 which amount shall be adjusted to the next higher multiple of \$100
45 if not already a multiple thereof; or

46 (C) Has performed at least 770 hours of service in the
47 production and harvesting of agricultural crops.

1 (6) The individual applying for benefits in any successive
2 benefit year has earned at least six times his previous weekly
3 benefit amount and has had four weeks of employment since the
4 beginning of the immediately preceding benefit year. This
5 provision shall be in addition to the earnings requirements specified
6 in paragraph (4) or (5) of this subsection, as applicable.

7 (f) (1) The individual has suffered any accident or sickness not
8 compensable under the workers' compensation law, R.S.34:15-1 et
9 seq. and resulting in the individual's total disability to perform any
10 work for remuneration, and would be eligible to receive benefits
11 under this chapter (R.S.43:21-1 et seq.) (without regard to the
12 maximum amount of benefits payable during any benefit year)
13 except for the inability to work and has furnished notice and proof
14 of claim to the division, in accordance with its rules and
15 regulations, and payment is not precluded by the provisions of
16 R.S.43:21-3(d); provided, however, that benefits paid under this
17 subsection (f) shall be computed on the basis of only those base
18 year wages earned by the claimant as a "covered individual," as
19 defined in subsection (b) of section 3 of P.L.1948, c.110 (C.43:21-
20 27); provided further that no benefits shall be payable under this
21 subsection to any individual:

22 (A) For any period during which such individual is not under the
23 care of a legally licensed physician, dentist, optometrist, podiatrist,
24 practicing psychologist, advanced practice nurse, or chiropractor,
25 who, when requested by the division, shall certify within the scope
26 of the practitioner's practice, the disability of the individual, the
27 probable duration thereof, and, where applicable, the medical facts
28 within the practitioner's knowledge;

29 (B) (Deleted by amendment, P.L.1980, c.90.)

30 (C) For any period of disability due to willfully or intentionally
31 self-inflicted injury, or to injuries sustained in the perpetration by
32 the individual of a crime of the first, second or third degree;

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

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

44 (F) For any period of disability commencing while such
45 individual is a "covered individual," as defined in subsection (b) of
46 section 3 of the "Temporary Disability Benefits Law," P.L.1948,
47 c.110 (C.43:21-27).

1 (2) The individual is taking family temporary disability leave to
2 provide care for a family member with a serious health condition or
3 to be with a child during the first 12 months after the child's birth or
4 placement of the child for adoption with the individual, and the
5 individual would be eligible to receive benefits under R.S.43:21-1
6 et seq. (without regard to the maximum amount of benefits payable
7 during any benefit year) except for the individual's unavailability
8 for work while taking the family temporary disability leave, and the
9 individual has furnished notice and proof of claim to the division, in
10 accordance with its rules and regulations, and payment is not
11 precluded by the provisions of R.S.43:21-3(d) provided, however,
12 that benefits paid under this subsection (f) shall be computed on the
13 basis of only those base year wages earned by the claimant as a
14 "covered individual," as defined in subsection (b) of section 3 of
15 P.L.1948, c.110 (C.43:21-27); provided further that no benefits
16 shall be payable under this subsection to any individual:

17 (A) For any week with respect to which or a part of which the
18 individual has received or is seeking benefits under any
19 unemployment compensation or disability benefits law of any other
20 state or of the United States; provided that if the appropriate agency
21 of such other state or the United States finally determines that the
22 individual is not entitled to such benefits, this disqualification shall
23 not apply;

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

28 (C) For any period of family temporary disability leave
29 commencing while the individual is a "covered individual," as
30 defined in subsection (b) of section 3 of the "Temporary Disability
31 Benefits Law," P.L.1948, c.110 (C.43:21-27); or

32 (D) For any period of family temporary disability leave for a
33 serious health condition of a family member of the claimant during
34 which the family member is not receiving inpatient care in a
35 hospital, hospice, or residential medical care facility and is not
36 subject to continuing medical treatment or continuing supervision
37 by a health care provider, who, when requested by the division,
38 shall certify within the scope of the provider's practice, the serious
39 health condition of the family member, the probable duration
40 thereof, and, where applicable, the medical facts within the
41 provider's knowledge.

42 (3) Benefit payments under this subsection (f) shall be charged
43 to and paid from the State disability benefits fund established by the
44 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
45 et al.), and shall not be charged to any employer account in
46 computing any employer's experience rate for contributions payable
47 under this chapter.

1 (g) Benefits based on service in employment defined in
2 subparagraphs (B) and (C) of R.S.43:21-19 (i)(1) shall be payable
3 in the same amount and on the terms and subject to the same
4 conditions as benefits payable on the basis of other service subject
5 to the "unemployment compensation law"; except that,
6 notwithstanding any other provisions of the "unemployment
7 compensation law":

8 (1) With respect to service performed after December 31, 1977,
9 in an instructional research, or principal administrative capacity for
10 an educational institution, benefits shall not be paid based on such
11 services for any week of unemployment commencing during the
12 period between two successive academic years, or during a similar
13 period between two regular terms, whether or not successive, or
14 during a period of paid sabbatical leave provided for in the
15 individual's contract, to any individual if such individual performs
16 such services in the first of such academic years (or terms) and if
17 there is a contract or a reasonable assurance that such individual
18 will perform services in any such capacity for any educational
19 institution in the second of such academic years or terms;

20 (2) With respect to weeks of unemployment beginning after
21 September 3, 1982, on the basis of service performed in any other
22 capacity for an educational institution, benefits shall not be paid on
23 the basis of such services to any individual for any week which
24 commences during a period between two successive academic years
25 or terms if such individual performs such services in the first of
26 such academic years or terms and there is a reasonable assurance
27 that such individual will perform such services in the second of
28 such academic years or terms, except that if benefits are denied to
29 any individual under this paragraph (2) and the individual was not
30 offered an opportunity to perform these services for the educational
31 institution for the second of any academic years or terms, the
32 individual shall be entitled to a retroactive payment of benefits for
33 each week for which the individual filed a timely claim for benefits
34 and for which benefits were denied solely by reason of this clause;

35 (3) With respect to those services described in paragraphs (1)
36 and (2) above, benefits shall not be paid on the basis of such
37 services to any individual for any week which commences during
38 an established and customary vacation period or holiday recess if
39 such individual performs such services in the period immediately
40 before such vacation period or holiday recess, and there is a
41 reasonable assurance that such individual will perform such
42 services in the period immediately following such period or holiday
43 recess;

44 (4) With respect to any services described in paragraphs (1) and
45 (2) above, benefits shall not be paid as specified in paragraphs (1),
46 (2), and (3) above to any individual who performed those services
47 in an educational institution while in the employ of an educational
48 service agency, and for this purpose the term "educational service

1 agency" means a governmental agency or governmental entity
2 which is established and operated exclusively for the purpose of
3 providing those services to one or more educational institutions.

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

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

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

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

39 (j) Notwithstanding any other provision of this chapter, the
40 director may, to the extent that it may be deemed efficient and
41 economical, provide for consolidated administration by one or more
42 representatives or deputies of claims made pursuant to subsection
43 (f) of this section with those made pursuant to Article III (State
44 plan) of the "Temporary Disability Benefits Law," P.L.1948,
45 c.110 (C.43:21-25 et al.).

46 (k) Benefits shall not be paid to any individual on the basis of
47 services performed in the employ of this State, or any county,
48 municipality, school district or other political subdivision of the

S811 TESTA

10

1 State if such individual performed such services less than 100 days
2 during his base year in a seasonal industry or occupation, unless he
3 has earned wages during his base year in other covered employment
4 not less than 10 times his average weekly wage.

5 For purposes of this subsection, “seasonal industry or
6 occupation” means an industry or occupation which, because
7 climactic conditions make it impractical or impossible to do
8 otherwise, customarily operates only during a regularly recurring
9 period or periods of less than 26 weeks of work in a calendar year.

10 (cf: P.L.2008, c.17, s.14)

11

12 2. This act shall take effect immediately.

13

14

15 STATEMENT

16

17 This bill alters benefit eligibility conditions of unemployment
18 insurance (UI) for seasonal workers employed by the State, or any
19 county, municipality, school district or other political subdivision of
20 the State. The bill provides that an individual working less than 100
21 days during his base year in a seasonal industry or occupation will
22 not receive UI benefits, unless he has earned wages during his base
23 year in other covered employment not less than 10 times his
24 average weekly wage. For purposes of this bill, “seasonal industry
25 or occupation” means an industry or occupation which, because
26 climatic conditions make it impractical or impossible to do
27 otherwise, customarily operates only during a regularly recurring
28 period or periods of less than 26 weeks of work in a calendar year.