

SENATE, No. 2774

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED AUGUST 3, 2020

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Co-Sponsored by:

Senators T.Kean, Pou, Turner and Singleton

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: 9/24/2020)

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 on
13 his premises printed notices of his subject status, of such design, in
14 such numbers and at such places as the director of the division may
15 determine to be necessary to give notice thereof to persons in the
16 employer's service. Each employer shall give to each individual at
17 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 case
22 that the unemployment is temporary, to the extent possible, the date
23 upon which the individual is expected to be recalled to work**];** and
24 (B) that the individual may lose some or all of the benefits to which
25 he is entitled if he fails to file a claim in a timely manner**].** Both the
26 aforesaid notices and instructions**],** including information detailing
27 the time sensitivity of filing a claim,**]** shall be supplied by the
28 division to employers without cost to them. Nothing in this section
29 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 claim
32 for unemployment insurance benefits at any time, 24 hours a day and
33 seven days a week, via the Internet on a website developed by the
34 division; however, any claim that is certified, cancelled or closed
35 after 7:00 PM will not be processed by the division until the next
36 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 not
45 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 for
2 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 have
5 passed since becoming unemployed or experiencing a reduction in
6 work hours, the effective date of the claim shall be the date of filing.

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

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

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

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

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

45 Whenever an initial determination is based upon information other
46 than that supplied by an employer because such employer failed to
47 respond to the deputy's request for information, such initial
48 determination and any subsequent determination thereunder shall be

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

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

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

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

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

25 (D) Gross misconduct as provided in subsection (b) of R.S.43:21-
26 5.

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

31 Unless the claimant or any interested party, within seven calendar
32 days after delivery of notification of an initial determination or within
33 10 calendar days after such notification was mailed to his or their
34 last-known address and addresses, files an appeal from such decision,
35 such decision shall be final and benefits shall be paid or denied in
36 accordance therewith, except for such determinations as may be
37 altered in benefit amounts or duration as provided in this paragraph.
38 Benefits payable for periods pending an appeal and not in dispute
39 shall be paid as such benefits accrue; provided that insofar as any
40 such appeal is or may be an appeal from a determination to the effect
41 that the claimant is disqualified under the provisions of R.S.43:21-5
42 or any amendments thereof or supplements thereto, benefits pending
43 determination of the appeal shall be withheld only for the period of
44 disqualification as provided for in said section, and notwithstanding
45 such appeal, the benefits otherwise provided by this act shall be paid
46 for the period subsequent to such period of disqualification; and
47 provided, also, that if there are two determinations of entitlement,
48 benefits for the period covered by such determinations shall be paid

1 regardless of any appeal which may thereafter be taken, but no
2 employer's account shall be charged with benefits so paid, if the
3 decision is finally reversed.

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

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

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

40 (c) Appeals. Unless such appeal is withdrawn, an appeal tribunal,
41 after affording the parties reasonable opportunity for fair hearing,
42 shall affirm or modify the findings of fact and the determination. The
43 parties shall be duly notified of such tribunal's decision, together with
44 its reasons therefor, which shall be deemed to be the final decision of
45 the board of review, unless further appeal is initiated pursuant to
46 subsection (e) of this section within 10 days after the date of
47 notification or mailing of the decision for any decision made on or
48 before December 1, 2010, or within 20 days after the date of

1 notification or mailing of such decision for any decision made after
2 December 1, 2010.

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

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

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

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

44 (h) Court review. Any decision of the board of review shall
45 become final as to any party upon the mailing of a copy thereof to
46 such party or to his attorney, or upon the mailing of a copy thereof to
47 such party at his last-known address. The Division of Unemployment
48 and Temporary Disability Insurance and any party to a proceeding

1 before the board of review may secure judicial review of the final
2 decision of the board of review. Any party not joining in the appeal
3 shall be made a defendant; the board of review shall be deemed to be
4 a party to any judicial action involving the review of, or appeal from,
5 any of its decisions, and may be represented in any such judicial
6 action by any qualified attorney, who may be a regular salaried
7 employee of the board of review or has been designated by it for that
8 purpose, or, at the board of review's request, by the Attorney General.

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

19 (j) With respect to benefit payments made on or after October 22,
20 2013, an employer's account shall not be relieved of charges related
21 to a benefit payment that was made erroneously from the division if
22 it is determined that:

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

27 (2) The employer, or an agent of the employer, has established a
28 pattern of failing to respond in a timely or adequate manner to
29 requests from the division for information related to claims for
30 benefits.

31 Determinations of the division prohibiting the relief of charges
32 pursuant to this subsection shall be subject to appeal in the same
33 manner as other determinations of the division related to the charging
34 of employer accounts.

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

36 "Erroneous benefit payment" means a benefit payment that, except
37 for the failure by the employer, or an agent of the employer, to
38 respond in a timely or adequate manner to a request from the division
39 for information with respect to the claim for benefits, would not have
40 been made; and

41 "Pattern of failing" means repeated documented failure on the part
42 of the employer, or an agent of the employer, to respond to requests
43 from the division to the employer or employer's agent for information
44 related to a claim for benefits, except that an employer, or an agent
45 of an employer, shall not be determined to have engaged in a "pattern
46 of failing" if the number of failures to respond to requests from the
47 division for information related to claims for benefits during the
48 previous 365 calendar days is less than three, or if the number of

1 failures is less than two percent of the number of requests from the
2 division, whichever is greater.

3 (k) The Department of Labor and Workforce Development shall
4 establish and maintain a procedure by which personnel access rights
5 to the department's primary system for unemployment claims receipt
6 and processing are comprehensively reviewed every calendar
7 quarter. The procedure shall include an evaluation of access needs
8 to the primary unemployment claims receipt and processing system
9 for all department personnel and the adjustment, addition, or deletion
10 of access rights for department personnel based on the quarterly
11 review.

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

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

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

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

26

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

29

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31 STATEMENT

32

33 This bill provides that the effective date of a claim for
34 unemployment benefits will be the date on which an individual
35 becomes unemployed or experiences a reduction in work hours,
36 unless the claimant waits to file for unemployment benefits more than
37 180 days after becoming unemployed or experiencing a reduction in
38 work hours. If the claimant files a claim for unemployment after 180
39 days have passed since becoming unemployed or experiencing a
40 reduction in work hours, the effective date of the claim will be the
41 date of filing.

42 Currently, regulations provide that the date of an individual's
43 claim for benefits is the Sunday prior to the week that the individual
44 files for unemployment benefits. Consequently, an individual who
45 does not file for unemployment benefits in the week the individual
46 becomes unemployed will lose benefits for which the individual
47 would otherwise be eligible.

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

4 The bill provides that if, after sixty days have passed, the division
5 determines that the claimant is not eligible for unemployment, the
6 division will not be entitled to any of the money previously paid to
7 that claimant.

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

10 The bill will be retroactive to all claims filed on or after March 1,
11 2020.