

ganization electing or required to make payments in lieu of contributions from its responsibility to make all benefit payments otherwise required by law and from being charged for those benefits as otherwise required by law.

New Rule, R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-9.6, Discharge after giving notice of resignation, recodified to N.J.A.C. 12:17-9.7.

Repeal and New Rule, R.2009 d.21, effective January 5, 2009.

See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

Section was "Voluntary layoff and/or early retirement incentive policy or program".

#### **12:17-9.7 Discharge after giving notice of resignation**

(a) When an individual gives the employer notice of resignation and the employer subsequently terminates the individual's employment prior to the effective date of the notice, the individual's separation shall be reviewed as a voluntarily leaving work issue as of the effective date of the resignation. However, the individual may receive benefits up to the date of resignation, if otherwise eligible.

(b) If the discharge in (a) above was the result of misconduct connected with the work, in addition to the voluntary leaving disqualification, the claimant will be subject to disqualification for misconduct connected with the work.

Recodified from N.J.A.C. 12:17-9.6 by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-9.7, Assignment of work under a union contract, recodified to N.J.A.C. 12:17-9.8.

#### **12:17-9.8 Assignment of work under a union contract**

If a union contract provides that a worker may be assigned other work when there is a lack of work in the worker's usual occupation, such assignment does not constitute an offer of new work since this change in duties is covered by the terms of the existing contract. If separated from employment for this reason, the employee shall be disqualified for benefits for voluntarily leaving work without good cause attributable to such work.

Recodified from N.J.A.C. 12:17-9.7 by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-9.8, Recall from temporary layoff, recodified to N.J.A.C. 12:17-9.9.

#### **12:17-9.9 Recall from temporary layoff**

If an unemployed individual is on a temporary layoff of up to 10 weeks and has a definite date of recall to work with a former employer and fails to return to such work, he or she shall be subject to disqualification for benefits for voluntarily leaving work.

Recodified from N.J.A.C. 12:17-9.8 by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-9.9, Loss of license needed as a condition of employment, recodified to N.J.A.C. 12:17-9.10.

#### **12:17-9.10 Loss of license needed as a condition of employment**

(a) If an individual is discharged due to the loss of a pre-requisite license which is necessary to perform the duties of his or her employment, such discharge shall subject the individual to disqualification for benefits for voluntarily leaving work if he or she engaged in an act which resulted in the loss of the license.

(b) If an individual fails to apply for or renew a pre-requisite license which is needed to perform the duties of his or her employment, and he or she is separated from work for not possessing the required license, the separation from work shall be considered a voluntary leaving of work and the individual shall be disqualified for benefits.

(c) If an individual is separated from work by the employer due to the individual's failure to pass a licensing or other qualifying examination, the separation from work shall be considered a discharge.

Recodified from N.J.A.C. 12:17-9.9 by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-9.10, Job abandonment, recodified to N.J.A.C. 12:17-9.11.

#### **12:17-9.11 Job abandonment**

(a) An employee who is absent from work for five or more consecutive work days and who without good cause fails to notify the employer of the reasons for his or her absence shall be considered to have abandoned his or her employment. Such job abandonment shall subject the employee to disqualification for benefits for voluntarily leaving work without good cause attributable to such work. For purposes of this section good cause means any situation over which the claimant did not have control and which was so compelling as to prevent the employee from notifying the employer of the absence.

(b) An employee who has not returned to work following an approved leave of absence pursuant to the employer's written policy, union contract or business custom and who without good cause has not notified the employer of the reasons for failing to return to work within five consecutive work days shall be considered to have abandoned his or her employment. Such job abandonment shall subject the employee to disqualification for benefits for voluntarily leaving work without good cause attributable to such work.

(c) This section shall not apply where an employer provides an employee with a date certain for return to work following an approved leave of absence, where on or prior to that date the employee communicates to the employer that he or she will not be returning to work on that date, and where the employee, in fact, does not return to work on that date. Under the circumstances described in this subsection, the individual's eligibility for unemployment compensation shall be evaluated under the remaining sections of this subchapter,

relative to whether the individual left work voluntarily without good cause attributable to such work.

(d) Nothing in (c) above shall be altered by virtue of the employee communicating to the employer within five consecutive work days following the date certain for return to work or thereafter that he or she is no longer unable to return to work and would now like to return to work. Under such circumstances, the individual's eligibility for unemployment compensation shall, as indicated in (c) above, be evaluated under the remaining sections of this subchapter, relative to whether the individual left work voluntarily without good cause attributable to such work.

Recodified from N.J.A.C. 12:17-9.10 and amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), inserted "without good cause" preceding "has not notified the employer". Former N.J.A.C. 12:17-9.11, Voluntary leaving work or discharge due to circumstances resulting from the individual being the victim of domestic violence, recodified to N.J.A.C. 12:17-9.12.

Amended by R.2010 d.242, effective November 1, 2010.

See: 41 N.J.R. 3779(a), 42 N.J.R. 2633(b).

Added (c) and (d).

#### Case Notes

Pursuant to N.J.A.C. 12:17-9.11(b), an employee could not be deemed to have abandoned her employment by failing to return to work until the expiration of five consecutive days from the last day of an approved leave of absence. Thus, a claimant was not disqualified for unemployment benefits as a "voluntary quit" under N.J.S.A. 43:21-5(a), because her employer terminated her on the day she was ordered to return to work. *Espina v. Bd. of Review*, 402 N.J. Super. 87, 952 A.2d 1108, 2008 N.J. Super. LEXIS 170, Unemployment Ins. Rep. (CCH) P8662 (App.Div. 2008).

#### **12:17-9.12 Leaving work or discharge due to circumstances resulting from the individual being the victim of domestic violence**

(a) Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits because the individual left work or was discharged due to circumstances resulting from the individual being a victim of domestic violence as defined in N.J.S.A. 2C:25-19.

(b) No employer's account, including non-profit and governmental entities electing the reimbursable method pursuant to N.J.S.A. 43:21-7.2, shall be charged for the payment of benefits to an individual who left work due to circumstances resulting from the individual being a victim of domestic violence.

(c) For the purposes of this section, the individual shall be treated as being a victim of domestic violence if the individual provides one or more of the following:

1. A restraining order or other documentation of equitable relief issued by a court of competent jurisdiction;
2. A police record documenting the domestic violence;

3. Documentation that the perpetrator of the domestic violence has been convicted of one or more of the offenses enumerated in N.J.S.A. 2C:25-19;

4. Medical documentation of the domestic violence issued by a licensed medical practitioner;

5. Certification from a certified Domestic Violence Specialist or the director of a designated domestic violence agency that the individual is a victim of domestic violence; or

6. Other documentation or certification of the domestic violence provided by a social worker, member of the clergy, shelter worker or other professional who has assisted the individual in dealing with the domestic violence.

(d) The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

"Certified Domestic Violence Specialist" means a person who has fulfilled the requirements of certification as a Domestic Violence Specialist established by the New Jersey Association of Domestic Violence Professionals.

"Designated domestic violence agency" means a county-wide organization with a primary purpose to provide services to victims of domestic violence, and which provides services that conform to the core domestic violence services profile as defined by the Division of Youth and Family Services in the Department of Human Services and is under contract with the Division for the express purpose of providing such services.

New Rule, R.2000 d.326, effective August 7, 2000.

See: 32 N.J.R. 1699(a), 32 N.J.R. 2907(a).

Recodified from N.J.A.C. 12:17-9.11 and amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Rewrote (b).

#### **SUBCHAPTER 10. CLAIMS ADJUDICATION— MISCONDUCT CONNECTED WITH THE WORK**

##### **12:17-10.1 Disqualification for misconduct connected with the work—general principles**

(a) An individual shall be disqualified for benefits for the week in which the individual has been suspended or discharged for misconduct connected with the work, and for the seven weeks that immediately follow that week. (See N.J.S.A. 43:21-5(b))

(b) An individual shall be disqualified for benefits for the week in which the individual has been suspended or discharged for severe misconduct connected with the work, and for each week thereafter until the individual becomes re-employed and works four weeks in employment, which may include employment for the Federal government, and has

earned in employment at least six times the individual's weekly benefit rate, as determined in each case.

(c) Unless a final discharge is changed to a suspension for misconduct connected with the work, if the discharge is rescinded by the employer voluntarily or as a result of mediation or arbitration, this section shall not apply. However, an individual who is restored to employment with back pay shall return any benefits received for any week of unemployment for which the individual is subsequently compensated by the employer.

(d) If the individual's discharge was for gross misconduct connected with the work because he or she committed an act punishable as a crime of the first, second, third, or fourth degree under the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., the individual shall be disqualified for benefits for the week in which he or she was discharged and for each week thereafter until the individual becomes reemployed and works eight weeks in employment and has earned at least 10 times the individual's weekly benefit rate. The individual will have no benefit rights based upon wages from that employer for services rendered prior to the day upon which he or she was discharged.

(e) An individual who is suspended for gross misconduct connected with the work shall be disqualified for benefits in the same manner as an individual who has been finally discharged for gross misconduct connected with the work.

(f) To sustain disqualification under this section, the burden of proof is on the employer to show through written documentation that the employee's actions constitute misconduct. However, in the case of gross misconduct, the following apply:

1. Where an employer provides sufficient evidence to establish that a claimant was discharged for gross misconduct connected with the work, prosecution or conviction shall not be required to sustain that the claimant has engaged in gross misconduct.
2. If an individual has been convicted of a crime of the first, second, third, or fourth degree under the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., in a court of competent jurisdiction, such conviction shall be conclusive as to a finding of gross misconduct.

Amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

Section was "Disqualification for misconduct and gross misconduct connected with work—general principles". Rewrote the section.

#### Case Notes

Implementation of employment settlement no bar to employee's unemployment benefits. *Robinson v. Camden County Health Services Center*, 97 N.J.A.R.2d (CSV) 669.

### 12:17-10.2 Discharge or suspension for unauthorized absence

(a) An individual shall be disqualified for benefits for simple misconduct connected with the work, if he or she did

not have good cause for being absent from work, or failed without justification to take steps necessary to notify the employer of the absence and the reason therefor.

(b) For the purpose of this section, "good cause" means any compelling personal circumstance, including illness, which would normally prevent a reasonable person under the same conditions from reporting to work.

(c) An unauthorized absence for five or more consecutive work days may constitute job abandonment and subject an individual to disqualification for benefits for voluntarily leaving work without good cause under N.J.A.C. 12:17-9.11.

*The following annotation applies to N.J.A.C. 12:17-10.2 prior to its repeal by R. 2015 d.079:*

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), substituted "malicious, and within the individual's control, and is either a deliberate violation" for "malicious, within the individual's control, a deliberate violation".

*The following annotations apply to N.J.A.C. 12:17-10.2 subsequent to its recodification from N.J.A.C. 12:17-10.3 by R. 2015 d.079:*

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (c), amended the N.J.A.C. reference.

Recodified from N.J.A.C. 12:17-10.3 and amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

In (a), inserted "simple". Former N.J.A.C. 12:17-10.2, Misconduct defined, repealed.

#### Case Notes

Pursuant to N.J.A.C. 12:17-9.11(b), an employee could not be deemed to have abandoned her employment by failing to return to work until the expiration of five consecutive days from the last day of an approved leave of absence. Thus, a claimant was not disqualified for unemployment benefits as a "voluntary quit" under N.J.S.A. 43:21-5(a), because her employer terminated her on the day she was ordered to return to work. *Espina v. Bd. of Review*, 402 N.J. Super. 87, 952 A.2d 1108, 2008 N.J. Super. LEXIS 170, Unemployment Ins. Rep. (CCH) P8662 (App.Div. 2008).

### 12:17-10.3 Discharge or suspension for tardiness

(a) Tardiness shall constitute simple misconduct if it was:

1. Chronic or excessive and is repeated after verbal and/or written warnings from the employer; and
2. Without reasonable excuse, or could have been anticipated by the individual and he or she failed without justification to take necessary steps to notify the employer of the expected tardiness.

Recodified from N.J.A.C. 12:17-10.4 and amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

In the introductory paragraph of (a), inserted "simple". Former N.J.A.C. 12:17-10.3, Discharge or suspension for unauthorized absence, recodified to N.J.A.C. 12:17-10.2.

### 12:17-10.4 Discharge or suspension for falsification of application or other records

An individual shall be considered to have committed an act of simple misconduct when it is established that he or she

falsified an employment application or other records required by the employer, or omitted information which created a material misrepresentation of his or her qualifications or suitability for the job.

Recodified from N.J.A.C. 12:17-10.5 and amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

Substituted "simple" for "willful". Former N.J.A.C. 12:17-10.4, Discharge or suspension for tardiness, recodified to N.J.A.C. 12:17-10.3.

#### **12:17-10.5 Discharge or suspension for insubordination or violation of an employer's rule**

(a) An individual shall be considered to have been discharged for an act of simple misconduct where it is established that he or she has committed an act of "simple misconduct" and met one of the following:

1. Refused without good cause to comply with instructions from the employer, which were lawful, reasonable, and did not require the individual to perform services beyond the scope of his or her customary job duties;
2. Acted beyond the expressed or implied authority granted to the individual by the employer; or
3. Violated a reasonable rule of the employer which the individual knew or should have known was in effect.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), rewrote the introductory paragraph and inserted "without good cause" following "Refused" in 1.

Recodified from N.J.A.C. 12:17-10.6 and amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

In the introductory paragraph of (a), inserted the first occurrence of "simple", and substituted "simple misconduct" for "misconduct as defined in N.J.A.C. 12:17-10.2". Former N.J.A.C. 12:17-10.5, Discharge or suspension for falsification of application or other records, recodified to N.J.A.C. 12:17-10.4.

#### **12:17-10.6 Discharge or suspension for unsatisfactory work performance**

An individual's discharge for failure to meet the employer's standard(s) relating to quantity or quality of work shall not be considered simple misconduct, unless it is established that he or she deliberately performed below the standard(s), in a manner that is consistent with "simple misconduct," and that the standard(s) was reasonable.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Rewrote the section.

Recodified from N.J.A.C. 12:17-10.7 and amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

Substituted "simple misconduct," for "misconduct" and "simple misconduct," for "N.J.A.C. 12:17-10.2". Former N.J.A.C. 12:17-10.6, Discharge or suspension for insubordination or violation of an employer's rule, recodified to N.J.A.C. 12:17-10.5.

#### **12:17-10.7 Discharge or suspension for failure to observe safety standards**

Where an individual has violated a reasonable safety standard imposed by the employer, such violation shall constitute an act of simple misconduct if the violation is consistent with the definition of "simple misconduct."

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Rewrote the section.

Recodified from N.J.A.C. 12:17-10.8 and amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

Inserted the first occurrence of "simple", and substituted "simple misconduct," for "misconduct as defined in N.J.A.C. 12:17-10.2". Former N.J.A.C. 12:17-10.7, Discharge or suspension for unsatisfactory work performance, recodified to N.J.A.C. 12:17-10.6.

#### **12:17-10.8 Failing or refusing to take an employer drug test**

(a) Where a drug-free workplace and/or drug testing is a prerequisite of employment, an employee who tests positive for illegal drugs on a bona fide drug test of the employer or refuses to provide a test sample for the employer violates a condition of employment. If separated from employment for this reason, the employee shall be disqualified for benefits for simple misconduct connected with such work.

(b) In order for the disqualification for benefits in (a) above to apply, the employer shall have a written drug test policy which has been conveyed to the employees.

Recodified from N.J.A.C. 12:17-10.9 and amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

In (a), inserted "simple". Former N.J.A.C. 12:17-10.8, Discharge or suspension for failure to observe safety standards, recodified to N.J.A.C. 12:17-10.7.

#### **12:17-10.9 (Reserved)**

Recodified to N.J.A.C. 12:17-10.8 by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

Section was "Failing or refusing to take an employer drug test".

### **SUBCHAPTER 11. CLAIMS ADJUDICATION— REFUSAL TO APPLY FOR OR ACCEPT SUITABLE WORK**

#### **12:17-11.1 Disqualification period for failure to apply for or accept suitable work—general principles**

An individual shall be disqualified for benefits if it is found that the individual has failed, without good cause, either to apply for available, suitable work when directed by the employment service office or the Director, or to accept