

CHAPTER 17

UNEMPLOYMENT BENEFIT PAYMENTS

Authority

N.J.S.A. 43:21-1 et seq., specifically, 43:21-7g.

Source and Effective Date

R.2009 d.21, effective December 10, 2008.
See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 17, Unemployment Benefit Payments, expires on December 10, 2015. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Subchapter 3, Definitions; Subchapter 4, Employer Records and Evidence Concerning Partial Unemployment; and Subchapter 5, Claim for Partial Unemployment Benefits, were adopted and became effective prior to September 1, 1969.

Subchapter 9, Procedures for Wage Benefit Conflicts, was adopted as new rules by R.1975 d.142, effective May 28, 1975. See: 7 N.J.R. 335(a).

Subchapter 10, Determination and Demand for Refund of Unemployment Benefits, was adopted as new rules by R.1980 d.468, effective October 23, 1980. See: 12 N.J.R. 426(a), 12 N.J.R. 724(c).

Subchapter 11, Offset of Unemployment Insurance Benefits by Retirement and Pension Income, was adopted as new rules by R.1980 d.561, effective January 1, 1981. See: 13 N.J.R. 102(a).

Amendments to Subchapter 10 became effective March 21, 1983 as R.1983 d.83. See: 15 N.J.R. 74(a), 15 N.J.R. 447(a).

Subchapter 12, Dependency Benefits, was adopted as new rules by R.1984 d.516, effective November 5, 1984. See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a).

Pursuant to Executive Order No. 66(1978), Subchapter 10 expired on October 23, 1985, and new rules on the same subject were adopted as R.1985 d.657, effective January 6, 1986. See: 17 N.J.R. 2525(b), 18 N.J.R. 91(a).

Pursuant to Executive Order No. 66(1978), Subchapter 11 was readopted as R.1985 d.718, effective December 30, 1985. See: 17 N.J.R. 2736(a), 18 N.J.R. 285(b).

Pursuant to Executive Order No. 66(1978), Chapter 17, Unemployment Benefit Payments, was readopted as R.1991 d.46, effective January 4, 1991. See: 22 N.J.R. 3445(a), 23 N.J.R. 310(b).

Chapter 17, Unemployment Benefit Payments, was readopted as R.1996 d.25, effective December 13, 1995. See: 27 N.J.R. 4123(b), 28 N.J.R. 270(a).

Chapter 17, Unemployment Benefit Payments, was repealed and adopted as new rules by R.1998 d.273, effective June 1, 1998 (operative July 5, 1998). See: 29 N.J.R. 5158(a), 30 N.J.R. 2027(a).

Subchapter 20, Worker Profiling and Reemployment Services, and Subchapter 21, Relief from Benefit Charges, were adopted as R.1999 d.115, effective April 15, 1999. See: 30 N.J.R. 4313(a), 31 N.J.R. 878(a).

Chapter 17, Unemployment Benefit Payments, was readopted as R.2003 d.276, effective June 13, 2003. See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Chapter 17, Unemployment Benefit Payments, was readopted as R.2009 d.21, effective December 10, 2008. See: Source and Effective Date. See, also, section annotations.

Subchapter 22, Claims for Family Leave Insurance Benefits During Unemployment, was adopted as new rules by R.2009 d.82, effective March 2, 2009. See: 40 N.J.R. 5509(a), 41 N.J.R. 1052(c).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. PURPOSE AND SCOPE

12:17-1.1 Purpose and scope

SUBCHAPTER 2. DEFINITIONS

12:17-2.1 Definitions

SUBCHAPTER 3. REPORTING OF WAGE AND SEPARATION INFORMATION

- 12:17-3.1 Instructions to workers at time of separation
- 12:17-3.2 Request for separation or wage information
- 12:17-3.3 Finality of benefit determinations
- 12:17-3.4 Notice of failure to apply for or to accept work
- 12:17-3.5 Notice of unemployment due to mass separation
- 12:17-3.6 Notice of unemployment due to labor dispute
- 12:17-3.7 Notice of temporary separation from work

SUBCHAPTER 4. REPORTING REQUIREMENTS TO CLAIM UNEMPLOYMENT BENEFITS AND TO REGISTER FOR WORK SEARCH ACTIVITIES

- 12:17-4.1 General reporting requirements
- 12:17-4.2 Reporting to file an initial or reopened claim
- 12:17-4.3 Reporting requirements for claiming completed weeks of unemployment benefits, employment services appointments, and other appointments
- 12:17-4.4 Reporting claim information after leaving reporting status
- 12:17-4.5 Proof of claimant identification and address
- 12:17-4.6 Forms prescribed for filing unemployment benefit claims
- 12:17-4.7 Benefit determination notice
- 12:17-4.8 Refusal to cooperate with quality control reviews
- 12:17-4.9 Reporting to claim benefits after one year

SUBCHAPTER 5. MONETARY REQUIREMENTS FOR BENEFIT ELIGIBILITY

- 12:17-5.1 Basic eligibility requirements
- 12:17-5.2 Alternative base years
- 12:17-5.3 Exceptions to the use of alternative base years
- 12:17-5.4 Use of wages to qualify for benefits
- 12:17-5.5 Requests for wage information and affidavits
- 12:17-5.6 Alternative base years for individuals claiming benefits after a period of disability

SUBCHAPTER 6. EMPLOYER RECORDS AND CLAIMS FOR PARTIAL UNEMPLOYMENT BENEFITS

- 12:17-6.1 Records for employees receiving partial unemployment benefits
- 12:17-6.2 Evidence of weekly partial unemployment
- 12:17-6.3 Registration and filing claims

SUBCHAPTER 7. DEPENDENCY BENEFITS

- 12:17-7.1 Calculation of dependency payment
- 12:17-7.2 Definition of dependent
- 12:17-7.3 Claiming dependents
- 12:17-7.4 Verification and proof of dependency status

SUBCHAPTER 8. REDUCTION OF BENEFITS BY
RETIREMENT IN PENSION INCOME AND OTHER
EARNED INCOME

- 12:17-8.1 Benefit reduction due to receipt of pension from base period or chargeable employers
- 12:17-8.2 Amount of benefit reduction
- 12:17-8.3 Lump sum pension reduction
- 12:17-8.4 Constructive receipt of pension, retroactive receipt of pension and rollovers of pension distributions
- 12:17-8.5 Reduction of benefits due to earned income
- 12:17-8.6 Disqualification for benefits for remuneration in lieu of notice
- 12:17-8.7 Severance or separation pay
- 12:17-8.8 Salary continuation through date of termination
- 12:17-8.9 Receipt of residuals
- 12:17-8.10 Vacation and holiday pay
- 12:17-8.11 Sick leave pay
- 12:17-8.12 Pay for work as a board worker for a county board of elections on an election day

SUBCHAPTER 9. CLAIM ADJUDICATION—
VOLUNTARILY LEAVING WORK

- 12:17-9.1 Disqualification for voluntarily leaving—general principles
- 12:17-9.2 Voluntarily leaving secondary part-time employment
- 12:17-9.3 Voluntary leaving for health or medical reasons
- 12:17-9.4 Voluntary leaving for health or safety conditions
- 12:17-9.5 Voluntary leaving work prior to imminent layoff or discharge
- 12:17-9.6 Voluntary leaving work – trailing spouse or civil union partner
- 12:17-9.7 Discharge after giving notice of resignation
- 12:17-9.8 Assignment of work under a union contract
- 12:17-9.9 Recall from temporary layoff
- 12:17-9.10 Loss of license needed as a condition of employment
- 12:17-9.11 Job abandonment
- 12:17-9.12 Leaving work or discharge due to circumstances resulting from the individual being the victim of domestic violence

SUBCHAPTER 10. CLAIMS ADJUDICATION—
MISCONDUCT AND GROSS MISCONDUCT
CONNECTED WITH WORK

- 12:17-10.1 Disqualification for misconduct and gross misconduct connected with work—general principles
- 12:17-10.2 Misconduct defined
- 12:17-10.3 Discharge or suspension for unauthorized absence
- 12:17-10.4 Discharge or suspension for tardiness
- 12:17-10.5 Discharge or suspension for falsification of application or other records
- 12:17-10.6 Discharge or suspension for insubordination or violation of an employer's rule
- 12:17-10.7 Discharge or suspension for unsatisfactory work performance
- 12:17-10.8 Discharge or suspension for failure to observe safety standards
- 12:17-10.9 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
- 12:17-11.2 Suitability of work defined
- 12:17-11.3 Establishing bona fide offers of work
- 12:17-11.4 Good cause for refusal of suitable work
- 12:17-11.5 Offers of new work

SUBCHAPTER 12. CLAIMS ADJUDICATION—OTHER
BENEFIT ELIGIBILITY ISSUES

- 12:17-12.1 Corporate officers, owners and creditors
- 12:17-12.2 Labor disputes

- 12:17-12.3 Employees on leave of absence
- 12:17-12.4 School employees
- 12:17-12.5 Claimant engaged in a temporary business
- 12:17-12.6 Student disqualification for benefits
- 12:17-12.7 Limiting availability to less than full-time work

SUBCHAPTER 13. PROCEDURES FOR WAGE-BENEFIT
CONFLICTS

- 12:17-13.1 Pre-determination notice and fact-finding
- 12:17-13.2 Fact-finding interview
- 12:17-13.3 Claimant's failure to appear

SUBCHAPTER 14. DETERMINATION AND DEMAND
FOR REFUND OF UNEMPLOYMENT BENEFIT
PAYMENTS

- 12:17-14.1 Statutory period for demanding refund
- 12:17-14.2 Waiver of recovery of benefit overpayment
- 12:17-14.3 Requirements for repaying overpaid benefits
- 12:17-14.4 Overpayment of benefits involving two determinations of entitlement

SUBCHAPTER 15. BENEFIT ELIGIBILITY FOR
CLAIMANTS EMPLOYED BY TEMPORARY HELP
SERVICE FIRMS

- 12:17-15.1 Definitions
- 12:17-15.2 Employment with temporary help service firm under a written agreement
- 12:17-15.3 Employment with temporary help service firm without a written agreement

SUBCHAPTER 16. PAYMENT OF BENEFITS TO
INTERSTATE CLAIMANTS

- 12:17-16.1 Cooperation with other states
- 12:17-16.2 Benefit rights of interstate claimants
- 12:17-16.3 Requirement to register for work
- 12:17-16.4 Reporting requirements for interstate benefit claims
- 12:17-16.5 Role of the agent state in benefit determinations
- 12:17-16.6 Appeals of benefit determinations
- 12:17-16.7 Reciprocal claims with Canada

SUBCHAPTER 17. CLAIMS FOR DISABILITY BENEFITS
DURING UNEMPLOYMENT

- 12:17-17.1 Notice and proof of disability
- 12:17-17.2 Procedures for filing of claims for benefits
- 12:17-17.3 Waiver of registration and reporting requirements
- 12:17-17.4 Payment of disability benefits during unemployment for individuals working for exempt employers
- 12:17-17.5 Simultaneous unemployment and disability benefit periods
- 12:17-17.6 Benefit determination

SUBCHAPTER 18. SELF-EMPLOYMENT ASSISTANCE
AND ENTREPRENEURIAL TRAINING PROGRAM

- 12:17-18.1 Definitions
- 12:17-18.2 Self-employment assistance program
- 12:17-18.3 Eligibility requirements
- 12:17-18.4 Self-employment assistance allowance
- 12:17-18.5 Appeals
- 12:17-18.6 Overpayment of self-employment assistance allowances

SUBCHAPTER 19. VOLUNTARY WITHHOLDING OF
FEDERAL INCOME TAX FROM UNEMPLOYMENT
BENEFITS

- 12:17-19.1 Notice to claimants of voluntary withholding of Federal income tax from unemployment benefits
- 12:17-19.2 Transfer of withheld unemployment benefits
- 12:17-19.3 Other withholdings

SUBCHAPTER 20. WORKER PROFILING AND REEMPLOYMENT SERVICES

- 12:17-20.1 Purpose and scope
- 12:17-20.2 Definitions
- 12:17-20.3 Identifying claimants
- 12:17-20.4 Statistical modeling process
- 12:17-20.5 Selection
- 12:17-20.6 Mandatory participation
- 12:17-20.7 Exempted individuals
- 12:17-20.8 Appeals

SUBCHAPTER 21. RELIEF FROM BENEFIT CHARGES

- 12:17-21.1 General provisions
- 12:17-21.2 Reasons for separation
- 12:17-21.3 Request for separation information
- 12:17-21.4 Misrepresentation or false information
- 12:17-21.5 Determination and appeals

SUBCHAPTER 22. CLAIMS FOR FAMILY LEAVE INSURANCE BENEFITS DURING UNEMPLOYMENT

- 12:17-22.1 Definitions
- 12:17-22.2 Notice and proof of family leave
- 12:17-22.3 Procedures for filing of claims for benefits
- 12:17-22.4 Waiver of registration and reporting requirements
- 12:17-22.5 Payment of family leave insurance benefits during unemployment for individuals working for exempt employers
- 12:17-22.6 Simultaneous unemployment and family leave insurance benefit periods
- 12:17-22.7 Benefit determination
- 12:17-22.8 Payment of family leave insurance benefits during unemployment
- 12:17-22.9 Reduction of benefits

SUBCHAPTER 1. PURPOSE AND SCOPE

12:17-1.1 Purpose and scope

(a) The Unemployment Compensation Law (UCL), N.J.S.A. 43:21-1 et seq., provides income security through the payment of unemployment insurance benefits to qualified individuals who are involuntarily unemployed. The UCL establishes the Unemployment Insurance (UI) Trust Fund which is financed by worker and employer contributions.

(b) The New Jersey Department of Labor and Workforce Development is charged with the administration of the Unemployment Insurance Program. This chapter will enable the Department to meet this charge by providing for the prompt and efficient payment of benefits to eligible individuals while protecting the interests of workers and employers who contribute to the Fund.

(c) The provisions of this chapter shall be applicable to all employers and to all workers who file claims for unemployment insurance with the New Jersey Department of Labor and Workforce Development.

(d) These rules shall be considered the basis by which the statutory purposes of the Unemployment Insurance benefit payment system are carried out. The Commissioner may relax these rules for good cause on a case-by-case basis, on notice

to affected parties, in order to effectuate the purpose of the Unemployment Compensation Law.

(e) These rules shall be effective July 7, 2003.

1. New and additional claims filed on or after July 7, 2003 shall be subject to these rules.

2. For claims filed prior to July 7, 2003, continued issues adjudicated on or after July 7, 2003 shall be subject to these rules.

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

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

In (e), substituted references to July 7, 2003 for references to July 5, 1998 throughout.

Amended by R.2005 d.385, effective November 7, 2005.

See: 37 N.J.R. 1123(a), 37 N.J.R. 4274(a).

In (b) and (c), added "and Workforce Development".

SUBCHAPTER 2. DEFINITIONS

12:17-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Agent state" means any state in which an individual files a claim for benefits against another state.

"Benefits" means the compensation payable to an individual with respect to his or her unemployment, under the unemployment compensation law of any state.

"Civil union" means the legally recognized union of two eligible individuals of the same sex established pursuant to N.J.S.A. 37:1-28 et seq.

"Civil union couple" means two persons who have established a civil union pursuant to N.J.S.A. 37:1-28 et seq.

"Civil union license" or "civil union certificate" means a document that certifies that the persons named on the license or certificate have established a civil union in New Jersey in compliance with N.J.S.A. 37:1-28 et seq.

"Civil union partner" means "one partner in a civil union couple," as that phrase is defined at N.J.S.A. 37:1-29; that is, a person who has established a civil union pursuant to the provisions of N.J.S.A. 37:1-28 et seq.

"Controller" means the Controller of the New Jersey Department of Labor and Workforce Development.

"Commissioner" means the Commissioner of the New Jersey Department of Labor and Workforce Development.

"Department" means the New Jersey Department of Labor and Workforce Development.

“Deputy” means a representative of the Division within the New Jersey Department of Labor and Workforce Development responsible for the administration of the Unemployment Insurance Benefit Payment Program.

“Director” means the Director of the Division within the New Jersey Department of Labor and Workforce Development responsible for the administration of the Unemployment Insurance Benefit Payment Program.

“Division” means the Division within the New Jersey Department of Labor and Workforce Development responsible for the administration of the Unemployment Insurance Benefit Payment Program.

“Employee” means any individual who performs services as defined at N.J.S.A. 43:21-19(i), for an employer, whether on a full-time or part-time basis.

“Employer” means employer as defined at N.J.S.A. 43:21-19(h) or 43:21-8(c).

“Employer-agent” means a person or entity that acts on behalf of an employer as defined at N.J.S.A. 43:21-19(h) or 43:21-8(c).

“Employment service office” means a free public employment office, or branch thereof, operated by this State or maintained as a part of a State-controlled system of public employment offices or One-Stop Career Centers as prescribed by the Workforce Investment Act of 1998. 29 U.S.C. §§ 2801 et seq.

“Interstate Benefit Payment Plan” means the plan approved by the National Association of State Workforce Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

“Interstate claimant” means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term “interstate claimant” shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the Division finds that in accordance with the Interstate Benefit Payment Plan commuting would result in excessive travel time or cost to the claimant.

“Liable state” means the state against which an individual files a claim for benefits through another state.

“Maximum benefit amount” on claims with benefit years commencing on or after July 1, 1986 and before July 1, 2003, means the total benefits payable to a claimant equal to three-quarters of the individual’s base weeks with all employers in the base year multiplied by the individual’s weekly benefit rate. Moreover, maximum benefit amount on claims with benefit years commencing on or after July 1, 2003 means the total benefits payable to a claimant equal to the number of the

individual’s base weeks with all employers in the base year multiplied by the individual’s weekly benefit rate. Pursuant to N.J.S.A. 43:21-3(d)(2), the maximum benefit amount shall not exceed 26 times the individual’s weekly benefit rate.

“One-Stop Career Center” means one of the centers designated by the local Workforce Investment Boards and certified by the State Employment and Training Commission to provide workforce investment services.

“Remuneration” means all compensation for personal services, including commission and bonuses and the cash value of all compensation in any medium other than cash, including payments “in kind” as defined at N.J.A.C. 12:16-4.8.

“State” means the states of the United States of America, the District of Columbia, the Virgin Islands or Puerto Rico.

“Unemployment” means the state of being unemployed (that is, not having a job, out of work). An individual shall be deemed “unemployed” for any week during which he or she is not engaged in full-time work and with respect to which his or her remuneration is less than the individual’s weekly benefit rate, including any week during which he or she is on vacation without pay; provided such vacation is not the result of the individual’s voluntary action. However, an officer of a corporation, or a person who has more than a five percent equitable or debt interest in the corporation, whose claim for benefits is based on wages with that corporation, shall not be deemed to be unemployed in any week during the individual’s term of office or ownership in the corporation.

“Wages” means remuneration paid by employers for employment including “in kind” payments as provided in N.J.A.C. 12:16-4.8. If a worker receives gratuities regularly in the course of employment from other than the employer, his or her “wages” shall also include the gratuities received, if reported in writing to the employer in accordance with regulations of the Division at N.J.A.C. 12:16-4.9. If gratuities are not reported, the individual’s “wages” shall be determined in accordance with the minimum wage rates prescribed under any labor law or regulation of this State or of the United States, or the amount of remuneration actually received by the employee from the employer, whichever is the higher.

“Week” means the calendar week ending at midnight Saturday.

“Weekly benefit rate” means 60 percent of the claimant’s average weekly wage, subject to a maximum of 56 2/3 percent of the Statewide average weekly remuneration paid to workers by employers subject to the Unemployment Compensation Law.

“Week of disqualification” means a calendar week ending at midnight Saturday with respect to any disqualification arising under N.J.S.A. 43:21-5.

“Week of unemployment” includes any week of unemployment as defined in the Unemployment Compensation Law of

the liable state from which benefits with respect to such week are claimed.

“Week of partial unemployment” means a calendar week ending at midnight Saturday in which an individual is employed not more than 80 percent of the hours normally worked in that individual’s occupation, profession, trade, or industry; due to lack of work; and earns remuneration which does not exceed the weekly benefit rate plus 20 percent of such rate.

“Week of total unemployment” means a calendar week ending at midnight Saturday in which an individual performs no services and with respect to which the individual receives no remuneration.

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

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

In “Employment service office”, inserted “or One-Stop Career Centers as prescribed by the Workforce Investment Act of 1998, 29 U.S.C. §§ 2801 et seq.”; in “Interstate Benefit Payment Plan”, substituted “National Association of State Workforce Agencies” for “Interstate Conference of Employment Security Agencies”; in “Interstate claimant”, substituted “Interstate Benefit Payment Plan” for “Interstate Benefit

Plan” following “in accordance with the”; added “One-Step Career Center”.

Amended by R.2005 d.385, effective November 7, 2005.

See: 37 N.J.R. 1123(a), 37 N.J.R. 4274(a).

Added “and Workforce Development” to definitions “Controller,” “Commissioner,” “Department,” “Deputy,” “Director” and “Division”; rewrote definition “Maximum benefit amount.”

Amended by R.2009 d.21, effective January 5, 2009.

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

Added definitions “Civil union”, “Civil union couple”, “Civil union license”, and “Civil union partner”.

SUBCHAPTER 3. REPORTING OF WAGE AND SEPARATION INFORMATION

12:17-3.1 Instructions to workers at time of separation

(a) Whenever a worker is separated from work (permanently, temporarily, or for an indefinite period) for any reason, at the time of the separation, the employer shall deliver to the worker the Department form entitled, “Instructions for Claiming Unemployment Benefits,” instructing the worker to report to a Department Reemployment Call Center by telephone or via the Internet at www.njuifile.net to file a claim for benefits. Such instructions shall contain the employer’s name, complete address, and New Jersey Employer Identification Number.

(b) Failure to comply with this requirement may subject the employer to the penalties prescribed in N.J.S.A. 43:21-16(c). However, it shall not relieve the claimant of the responsibility of reporting to file an unemployment claim.

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

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

Rewrote (a); in (b), deleted “in person to the unemployment claims office” in the second sentence.

Amended by R.2009 d.21, effective January 5, 2009.

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

In (a), substituted “the Department form entitled, ‘Instructions’ for ‘Form BC-10 (Instructions)’ and ‘Benefits,’ instructing” for “Benefits), instructing”, and inserted “Department” and “at www.njuifile.net”.

12:17-3.2 Request for separation or wage information

(a) Upon request by the Division for information regarding wages or the reason for separation from any worker from employment, the employer shall, within 10 calendar days after the date of mailing of the form requesting information, complete and return it to the appropriate office. The response shall be considered timely if it is postmarked or received by the Division within 10 calendar days after the date of mailing.

(b) Failure to comply with any request for information shall subject the employer to the penalties prescribed in N.J.S.A. 43:21-16(b)(1).

(c) If an employer fails to respond to a request for wage information within 10 calendar days after the mailing date, the Division shall rely on information from other sources, including an affidavit from the claimant certifying wages and time worked. If available, the affidavit should be supported

by evidence of wages and employment including, but not limited to, payroll stubs, W-2 forms, Federal or State income tax returns, copies of pay checks, etc.

1. An individual who claims or attempts to claim benefits through false or fraudulent representation shall be subject to disqualification under N.J.S.A. 43:21-5(g) and fines and the refund of benefits under N.J.S.A. 43:21-16.

(d) Whenever an initial monetary determination is based upon information other than that supplied by an employer because the employer failed to respond to the Division’s request for information, the initial monetary determination and any subsequent determination thereunder shall be incontestable by the noncomplying employer, as to any charges to the employer’s account because of benefits paid prior to the close of the calendar week following the receipt of the subsequent reply. The initial monetary determination shall be redetermined if necessary upon receipt of information from the employer, and any benefits paid or payable with respect to weeks occurring subsequent to the close of the calendar week following the receipt of the employer’s subsequent reply shall be paid in accordance with the redetermination.

(e) Except in the event of fraud, no refund liability shall be incurred by the claimant for any overpaid benefits resulting from information supplied on the affidavit which were paid prior to the receipt of the employer’s subsequent reply.

(f) A claimant will be liable to refund any overpaid amount resulting from receipt of benefits paid subsequent to the employer’s reply which resulted in a redetermination of the initial monetary determination.

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 “from employment,” for “from an employment,” preceding “the employer shall” and substituted “the appropriate office” for “the office that initiated the request” following “return it to”.

12:17-3.3 Finality of benefit determinations

(a) After receiving wage and separation information, the Division shall make a determination regarding the claimant’s eligibility for benefits which will be mailed to the claimant and employer. The benefit determination shall become final 10 days after the date of mailing or seven days after date of delivery unless an appeal is filed timely or late with good cause by the claimant or employer in accordance with N.J.A.C. 12:20-3.1.

(b) The Division may reconsider a final determination for the following reasons:

1. Fraud, misrepresentation or misconduct of a party;
2. Newly discovered evidence not ascertainable at the time of the initial benefit determination by the exercise of reasonable diligence and the making of proper inquiry which would probably alter the determination;

3. Obvious material mistake or error which requires correction;
4. To vacate a determination which is entered without legal right and is void; or
5. The correction of inadvertent, premature, or clearly erroneous action.

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 second sentence.

12:17-3.4 Notice of failure to apply for or to accept work

(a) When any claimant fails to apply for, or to accept, work when offered by an employer, the employer shall, within 48 hours, complete the Department form entitled, "Notice of Failure to Apply for, or to Accept, Suitable Work," setting forth the facts relating to the individual's failure to apply for, or to accept, work and forward it to the appropriate office. (See N.J.A.C. 12:17-11, Claims Adjudication—Refusal to Apply for or Accept Suitable Work.)

(b) Whenever an employer is notified by a One-Stop Career Center office that an individual has been referred to the employer for work, the employer shall, within 24 hours after the appointment, advise the latter office of the results of the referral.

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 "appropriate" for "proper unemployment claims" preceding "office" in the first sentence, and rewrote the second sentence; in (b), substituted "a One-Stop Career Center" for "an employment service" following "is notified by" and substituted "latter" for "employment service" following "advise the".

Amended by R.2009 d.21, effective January 5, 2009.

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

In (a), substituted "the Department form entitled, 'Notice' for "Form BC-6 (Notice" and "Work, setting" for "Work setting", and inserted a comma following "N.J.A.C. 12:17-11".

12:17-3.5 Notice of unemployment due to mass separation

(a) For the purposes of this subchapter, the term "mass separation" means the separation of 25 or more employees in a single establishment (either permanently or for an indefinite period) at or about the same time and for the same reason, except where the separation or unemployment is due to a labor dispute.

(b) As soon as possible, but not later than 48 hours prior to any mass separation, the employer shall file a notice thereof with the Director of the Division of Unemployment Insurance, P.O. Box 058, John Fitch Plaza, Trenton, New Jersey 08625-0058. Where the employer has no advance knowledge of the mass separation, such notice shall be filed within 24 hours after the mass separation occurs. Such notice shall contain the following information:

1. The name and address of the employer;

2. A statement of the cause of separation;
3. The number and job titles of employees affected;
4. The expected duration of the period of unemployment; and
5. Whether or not the employer will have sufficient employees to handle requests for wage information that may be issued by the Division.

(c) The employer shall provide the Division with information relating to payments made to affected employees for vacation, sick leave, pension, remuneration in lieu of notice and severance.

(d) Where a mass separation has not occurred but is threatened or likely to occur, the employer shall submit to the Division when requested such information as may be required.

(e) The employer shall deliver the Department form entitled, "Instructions for Claiming Unemployment Benefits," to each employee at the time of mass separation.

(f) Employers that have completed the notification requirements under the Federal Worker Adjustment and Retraining Notification Act contained at 20 C.F.R. Part 639 and N.J.A.C. 12:40 shall be considered in compliance with (b) above.

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), deleted ", or with an expected duration of seven or more days" following "an indefinite period"; in (b), substituted "unit of the One-Stop Career Center" for "claims office" in the first sentence of the introductory paragraph and substituted "the Division" for "unemployment claims offices" in 5.

Administrative correction.

See: 38 N.J.R. 2834(b).

Amended by R.2009 d.21, effective January 5, 2009.

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

In the introductory paragraph of (b), inserted a comma following "possible" and substituted "Director of the Division of Unemployment Insurance, P.O. Box 058, John Fitch Plaza, Trenton, New Jersey 08625-0058" for "unemployment unit of the One-Stop Career Center located nearest the place of employment"; and in (e), substituted "the Department form entitled, 'Instructions' for "Form BC-10 (Instructions" and "Benefits, to each" for "Benefits) to each".

12:17-3.6 Notice of unemployment due to labor dispute

In case of unemployment due to a labor dispute, the employer shall file a notice immediately with the Director of the Division of Unemployment Insurance, P.O. Box 058, John Fitch Plaza, Trenton, New Jersey 08625-0058. Such notice shall include information concerning the existence and nature of a labor dispute, the approximate number of individuals involved and the name and address of the bargaining unit. See N.J.A.C. 12:17-12.2.

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

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

Substituted "unit of the One-Stop Career Center" for "claims office" in the first sentence.

Amended by R.2009 d.21, effective January 5, 2009.

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

Substituted "Director of the Division of Unemployment Insurance, P.O. Box 058, John Fitch Plaza, Trenton, New Jersey 08625-0058" for "unemployment unit of the One-Stop Career Center located nearest the place of employment".

12:17-3.7 Notice of temporary separation from work

(a) Whenever an individual is temporarily separated for lack of work, the employer, upon request by the Division, shall provide the expected duration of the individual's period of unemployment, the reason for separation, and the date on which the employer expects the individual to return to work.

(b) If the period of temporary unemployment is for eight weeks or less and the employer has furnished the information required in (a) above, the individual shall be entitled to benefits provided all of the conditions of benefit eligibility are met. However, the individual will not be required to actively seek work during this period.

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 "Division" for "unemployment claims office" preceding ", shall provide".

SUBCHAPTER 4. REPORTING REQUIREMENTS TO CLAIM UNEMPLOYMENT BENEFITS AND TO REGISTER FOR WORK SEARCH ACTIVITIES

12:17-4.1 General reporting requirements

(a) Individuals shall report as directed by the Division as to date, time, and place in person, by telephone, by mail, via an Internet application or as the Division may otherwise prescribe.

(b) An individual who fails to report as directed will be ineligible for benefits unless, pursuant to a fact-finding hearing, it is determined that there is "good cause" for failing to comply. For the purposes of this subchapter, "good cause" means any situation which was substantial and prevented the claimant from reporting as required by the Division.

(b) When an individual's employment is terminated, any lump sum payment of unused accrued sick leave is not a bar to the receipt of unemployment benefits.

12:17-8.12 Pay for work as a board worker for a county board of elections on an election day

(a) For the purposes of eligibility for unemployment insurance benefits, an unemployed individual, who is otherwise eligible for benefits, shall not be deemed unavailable for work or ineligible solely by reason of the individual's work as a board worker for a county board of election on an election day.

(b) An individual's eligibility for unemployment insurance benefits shall not be affected, and the amount of benefits received by the individual shall not be reduced, as result of election day work at the polls.

New Rule, R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

**SUBCHAPTER 9. CLAIM ADJUDICATION—
VOLUNTARILY LEAVING WORK**

**12:17-9.1 Disqualification for voluntarily leaving—
general principles**

(a) An individual shall be disqualified for benefits for the week in which he or she has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed 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. See N.J.S.A. 43:21-5(a).

(b) For the purpose of this subchapter, "good cause attributable to such work" means a reason related directly to the individual's employment, which was so compelling as to give the individual no choice but to leave the employment.

(c) The burden of proof is on the claimant to establish good cause attributable to such work for leaving.

(d) An individual who leaves work for several reasons, one of which constitutes good cause attributable to such work, shall not be disqualified for benefits.

(e) An individual's separation from employment shall be reviewed as a voluntarily leaving work issue where the separation was for the following reasons including, but not limited to:

1. Lack of transportation;
2. Care of children or other relatives;
3. School attendance;

4. Self-employment;
5. Lack of housing;
6. Relocating to another area for personal reasons;
7. Relocating to another area to accompany a spouse, a civil union partner, or other relatives;
8. Voluntary retirement;
9. To accept other work; or
10. Incarceration.

Amended by R.2009 d.21, effective January 5, 2009.
See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).
In (e)7, inserted " , a civil union partner,".

Case Notes

Where the undisputed facts supported the conclusion that the claimant resigned from the employer's business for work-related transportation problems rather than for personal reasons, the claimant was entitled to statutory unemployment benefits. *Utley v. Board of Review, Dep't of Labor*, 194 N.J. 534, 946 A.2d 1039, 2008 N.J. LEXIS 424 (2008).

Individual who leaves work for several reasons, one of which constitutes good cause attributable to such work, shall not be disqualified from unemployment benefits. *Utley v. Board of Review, Dep't of Labor*, 194 N.J. 534, 946 A.2d 1039, 2008 N.J. LEXIS 424 (2008).

When commuting problems arise solely from the personal circumstances of the worker, unrelated to an alteration in the terms or conditions of employment, the worker who voluntarily quits the job cannot show good cause qualifying the worker for unemployment benefits. However, there could be circumstances in which the employer set in motion a chain of events that led to a worker's inability to get to work, thus qualifying that employee for unemployment benefits, such as a sudden change in employment circumstances greatly increasing the commuting distance from home to job. *Utley v. Board of Review, Dep't of Labor*, 194 N.J. 534, 946 A.2d 1039, 2008 N.J. LEXIS 424 (2008).

Employer's inappropriate request for lie detector test good cause for voluntarily leaving work. In the *Matter of J.C.*, 97 N.J.A.R.2d (UCC) 45.

12:17-9.2 Voluntarily leaving secondary part-time employment

(a) A worker, who is employed by two or more employers, one of which is full-time work and the other(s) part-time work, who is separated from the full-time employment and becomes eligible for benefits, and subsequently voluntarily leaves the part-time employment, shall be subject to a partial disqualification for voluntarily leaving the part-time employment. An individual may avoid partial disqualification if he or she can establish good cause attributable to such work as defined in N.J.A.C. 12:17-9.1(b). The partial disqualification amount is determined by dividing the total part-time earnings during the eight-week period immediately preceding the week in which the separation occurred by the total number of weeks the individual worked in that part-time employment during the eight-week period. The partial earnings amount is then deducted from the partial weekly benefit amount. The partial disqualification shall remain in effect until the individual becomes reemployed and works four weeks in employment, which may include employment for the Federal government, and he or she has earned in employment six

times the individual's weekly benefit rate, as determined in each case.

1. An individual, who leaves part-time employment and, without prior knowledge, is subsequently separated from full-time employment, shall not be disqualified for leaving the part-time employment.

2. Personal reasons for leaving part-time employment which arise from the loss of the full-time employment may constitute good cause attributable to such work.

(b) A worker who is employed by two or more employers on a part-time basis and who leaves one employer voluntarily without good cause attributable to such work, shall be subject to disqualification for voluntarily leaving work.

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), added the last sentence in the introductory paragraph.

12:17-9.3 Voluntary leaving for health or medical reasons

(a) An individual who leaves work because of a disability which has a work-connected origin is not subject to disqualification for voluntarily leaving work, provided there was no other suitable work available which the individual could have performed within the limits of the disability.

(b) An individual who leaves a job due to a physical and/or mental condition or state of health which does not have a work-connected origin but is aggravated by working conditions will not be disqualified for benefits for voluntarily leaving work without good cause "attributable to such work," provided there was no other suitable work available which the individual could have performed within the limits of the disability. When a non-work connected physical and/or mental condition makes it necessary for an individual to leave work due to an inability to perform the job, the individual shall be disqualified for benefits for voluntarily leaving work.

(c) Notwithstanding (b) above, an individual who has been absent because of a personal illness or physical and/or mental condition shall not be subject to disqualification for voluntarily leaving work if the individual has made a reasonable effort to preserve his or her employment, but has still been terminated by the employer. A reasonable effort is evidenced by the employee's notification to the employer, requesting a leave of absence or having taken other steps to protect his or her employment.

(d) When an individual leaves work for health or medical reasons, medical certification shall be required to support a finding of good cause attributable to work.

12:17-9.4 Voluntary leaving for health or safety conditions

An individual shall not be disqualified for benefits for voluntarily leaving work if he or she can establish that working

conditions are so unsafe, unhealthful, or dangerous as to constitute good cause attributable to such work.

12:17-9.5 Voluntary leaving work prior to imminent layoff or discharge

If an individual leaves work after he or she is notified by the employer of an impending layoff or discharge, he or she shall be subject to disqualification for benefits unless the individual will be separated within 60 days. For purposes of this section, imminent layoff or discharge is one in which the individual will be separated within 60 days.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In former (a), deleted the designation and substituted "60 days" for "four weeks" throughout; deleted former (b).

Case Notes

Former employee was not disqualified from receiving unemployment compensation benefits under N.J.S.A. 43:21-5(a) for voluntarily leaving her position as a veterinarian as she established that she was compelled to resign because of a real, imminent, and substantial risk of losing her job after being advised by the employer to leave. The employer's advisement that her continued employment was no longer desired conveyed a very strong likelihood of imminent discharge, subject to the parties' contractual agreement to provide 60 days notice before termination. *Shuster v. Bd. of Review*, 396 N.J. Super. 240, 933 A.2d 641, 2007 N.J. Super. LEXIS 332, Unemployment Ins. Rep. (CCH) P8658 (App.Div. 2007).

12:17-9.6 Voluntary leaving work – trailing spouse or civil union partner

(a) No otherwise eligible individual shall be denied benefits for any week in which the individual left work voluntarily and without good cause attributable to the work, if the individual left work to accompany his or her spouse or civil union partner who is an active member of the United States Armed Forces, as defined in N.J.S.A. 38A:1-1(g), to a new place of residence outside the State, due to the armed forces member's transfer to a new assignment in a different geographical location outside the State, provided that the following requirements are also met:

1. The otherwise eligible individual moves to the new place of residence not more than nine months after the spouse or civil union partner is transferred; and

2. Upon arrival at the new place of residence, the otherwise eligible individual is in all respects available for suitable work.

(b) No employer's account shall be charged for the payment of benefits to an individual who left work under the circumstances set forth in (a) above, except that this shall not be construed as relieving the State of New Jersey and any other governmental entity or instrumentality or nonprofit organization 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 prerequisite 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 prerequisite 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 con-

secutive 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 AND GROSS MISCONDUCT CONNECTED WITH WORK

12:17-10.1 Disqualification for misconduct and gross misconduct connected with 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 five weeks which immediately follow that week. (See N.J.S.A. 43:21-5(b).)

(b) 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.

(c) 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 four weeks in employment and has earned at least six 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.

(d) 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.

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 Misconduct defined

(a) For an act to constitute misconduct, it must be improper, intentional, connected with one's work, malicious, and within the individual's control, and is either a deliberate violation of the employer's rules or a disregard of standards of behavior which the employer has the right to expect of an employee.

(b) To sustain disqualification under this section, the burden of proof is on the employer to show 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.

(c) "Connected with the work" means not only misconduct that occurs in the course of employment during working hours, but includes any conduct which occurs after working hours or off the employer's premises where there is substantial evidence that the conduct adversely impacts the employer or the individual's ability to perform the duties of his or her job.

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".

12:17-10.3 Discharge or suspension for unauthorized absence

(a) An individual shall be disqualified for benefits for 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.

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.

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).

12:17-10.4 Discharge or suspension for tardiness

(a) Tardiness shall constitute 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.

12:17-10.5 Discharge or suspension for falsification of application or other records

An individual shall be considered to have committed an act of willful 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.

12:17-10.6 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 misconduct where it is established that he or she has committed an act of misconduct as defined in N.J.A.C. 12:17-10.2 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.

12:17-10.7 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 misconduct unless it is established that he or she deliberately performed below the standard(s), in a manner that is consistent with N.J.A.C. 12:17-10.2, 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.

12:17-10.8 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 misconduct if the violation is consistent with the definition of misconduct as defined in N.J.A.C. 12:17-10.2.

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.

12:17-10.9 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 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.

**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 suitable work when it is offered. The disqualification shall continue for the week in which the failure to apply occurred and for the three weeks which immediately follow that week. This disqualification for failure to accept suitable work shall be imposed during the week in which the individual refused

the work or, if there is a definite starting date, the week in which the work is to begin. (See N.J.S.A. 43:21-5(c).)

12:17-11.2 Suitability of work defined

(a) In determining whether or not the work is suitable, consideration shall be given to the degree of risk involved to health, safety and morals, the individual's physical fitness and prior training, experience and prior earnings and employee benefits, the individual's length of unemployment, prospects for securing work in the individual's customary occupation and commuting distance.

1. For a position to be considered suitable, all of the factors in (a) above must be judged with respect to the particular individual involved.

2. For purposes of this subchapter, and restricted to those offers of work made during an individual's benefit year, suitability in terms of wages means eighty percent of the claimant's average weekly wage (including the value of employee benefits) during the base year.

3. Notwithstanding any other provisions of this subchapter an offer of work at a rate of pay less than provided by the State minimum hourly wage shall be unsuitable.

(b) No work may be deemed suitable, and an individual will not be disqualified for benefits because of his or her refusal to accept work under any of the following conditions:

1. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

2. If the wages, hours, or other conditions of work offered are substantially less favorable than those prevailing for similar work in the labor market area; or

3. If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

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 2.

12:17-11.3 Establishing bona fide offers of work

(a) An individual shall not be disqualified for benefits pursuant to this subchapter unless it has been established that there was a bona fide offer of work or referral to work which he or she refused. An employer should document offers of work and should contact the Division if unable to reach the claimant. In order for a bona fide offer or referral to exist it must be shown that:

1. There was an offer of work to a specific job evidenced by details of the job including job duties, rate of pay, hours of work; and

2. The offer was conveyed in writing or verbally to the individual.

(b) If an individual prevents the details of the job from being relayed by refusing the job or the referral at the beginning of the interview, the offer is still considered bona fide.

12:17-11.4 Good cause for refusal of suitable work

For purposes of this subchapter, "good cause" means any situation over which the claimant did not have control or which was so compelling as to prevent the claimant from accepting work. In order to establish good cause, the claimant must have made a reasonable attempt to remove the restrictions pertaining to the refusal.

12:17-11.5 Offers of new work

(a) An individual shall be subject to disqualification for benefits if he or she fails to accept or apply for suitable new work. For purposes of this subchapter, "new work" means:

1. An offer of work made to an unemployed individual by an employer with whom he or she has never worked;
2. An offer of reemployment made to an unemployed individual by any former employer, following an indefinite layoff with no recall date; or
3. An offer of work made by an individual's present employer of substantially different duties, terms or conditions of employment from those he or she agreed to perform in his or her existing contract of hire. Examples of factors which may be weighed when considering whether there is a substantial change in the terms or conditions of employment which constitute "new work" include, but are not limited to, the employer's change of hours or shift, job duties, location, salary, benefits, work environment and health and safety conditions.

(b) An individual who accepts suitable work for a brief period, and voluntarily leaves such work for reasons not attributable to the work, shall not be disqualified for benefits for voluntarily leaving work. The individual may be subject to disqualification for refusal to accept suitable work in accordance with N.J.S.A. 43:21-5(c).

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), rewrote the first sentence and added the second sentence.

SUBCHAPTER 12. CLAIMS ADJUDICATION— OTHER BENEFIT ELIGIBILITY ISSUES

12:17-12.1 Corporate officers, owners and creditors

(a) An officer of a corporation and/or a person who has more than five percent equitable or debt interest in the corporation, whose claim for benefits is based on wages with that corporation, shall not be considered unemployed in any week during the individual's term of office or ownership in the corporation and the claim shall be determined invalid.

1. An equitable interest in the corporation is defined as the ownership of the corporate stock.

2. A debt interest in the corporation is defined as being a creditor of the corporation.

3. A corporation is considered viable unless it has permanently ceased operations and has filed for formal dissolution in accordance with the New Jersey Business Corporation Act, N.J.S.A. 14A:1-1 et seq.; or has filed for bankruptcy under Chapter 7 of the United States Bankruptcy Code.

(b) If an individual is determined ineligible for benefits, and if he or she has sufficient earnings in other employment to qualify for a valid claim, an adjusted monetary determination shall be made based solely on such employment. Benefits can be payable based on the adjusted monetary determination, provided he or she otherwise meets all other eligibility requirements for unemployment insurance benefits.

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 "permanently ceased operations and has filed for formal dissolution" for "been dissolved" in 3; added (b).

Case Notes

Before denying petition for unemployment compensation, Board of Review was required to consider petitioner's contention that he had divested himself of his ownership interest in the corporation that had employed him. *Rudbart v. Bd. of Review*, 770 A.2d 1273 (2001).

Owner of 25% equity share in corporation was not entitled to unemployment benefits after his employment with corporation was terminated, where corporation had not been formally dissolved, regardless of the reason corporation had not been formally dissolved. *Rudbart v. Bd. of Review*, 770 A.2d 1273 (2001).

Under statute and regulation, an officer of a corporation and/or a person who has more than a 5% equitable or debt interest in the corporation is ineligible for unemployment compensation benefits while that person still holds his or her stock or office or debt interest, and the corporation has neither been dissolved nor filed for bankruptcy. *Rudbart v. Bd. of Review*, 770 A.2d 1273 (2001).

Claimant, who was corporate treasurer and a 25% shareholder, was not "unemployed" and was precluded from receiving unemployment benefits even though restaurant (employer) had ceased operating; owner remained active for collection of debts. *Fernicola v. Board of Review*, 335 N.J.Super. 523 (A.D. 2001).

12:17-12.2 Labor disputes

(a) The following words and terms, as used in this section, shall have the following meanings:

1. "Labor dispute" means any controversy concerning wages, hours, working conditions or terms of employment between an employer and a bargaining unit or a group of employees.

4. Have recently completed similar reemployment services;
5. Are attending or registered to attend training at the time of profiling;
6. Are job-ready for existing job openings; or
7. Have become a member of an approved union hiring hall, have moved and are now filing on an interstate basis, or have received a definite recall date from the former employer.

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.

12:17-20.8 Appeals

Appeals from denials of or ineligibility for benefits under this subchapter shall be decided in accordance with N.J.A.C. 1:12 and 12:20 concerning appeals to the Appeal Tribunal and Board of Review for unemployment benefit determinations.

SUBCHAPTER 21. RELIEF FROM BENEFIT CHARGES

12:17-21.1 General provisions

(a) Whenever a claimant is paid unemployment benefits, his or her former employers' experience rating accounts shall be charged for the amount of benefits paid to the claimant. These charges shall be made in proportion to the wages paid by the employer during the base year of the claimant as compared with the total wages paid by all of his or her employers during the same period.

(b) An employer may impact the determination of the contribution rate by maintaining necessary records and information and providing same to the Division. Such information shall enable the Division of Employer Accounts to charge employer accounts properly and relieve charges under certain conditions.

(c) This subchapter shall apply to claims filed on or after January 4, 1998.

(d) This subchapter does not apply to governmental entities, whose benefit financing provisions are set forth in N.J.S.A. 43:21-7.3 and those nonprofit organizations liable for payment in lieu of contributions on the basis set forth in N.J.S.A. 43:21-7.2. This subchapter also does not apply to unemployment benefits paid to Federal employees and ex-service members which are fully financed by Federal funds.

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), substituted "providing same to the Division" for "providing some to the Division of Employer Accounts" in the first sentence.

12:17-21.2 Reasons for separation

(a) A base year employer may obtain relief from the charges for benefits paid to a former employee if the claimant was separated from his or her work with such employer due to any of the following reasons:

1. The claimant has left work without good cause attributable to his or her employment;
2. The claimant was discharged for willful misconduct or gross misconduct connected with the work;
3. The claimant has failed, without good cause, to apply for or accept suitable work;
4. The claimant would be disqualified for benefits because he or she has simultaneously claimed benefits against another state or Federal government;
5. The claimant would be disqualified for receiving benefits for the illegal receipt or attempted receipt of benefits as a result of any false or fraudulent representation; or

6. The claimant is in training approved under Section 236(a)(1) of the Trade Act of 1974 (19 U.S.C. § 2296(a)(1)) as amended by the Trade Act of 2002, P.L. 107-210, or when the claimant leaves work to enter this training as provided by N.J.S.A. 43:21-5(h).

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), inserted "as amended by the Trade Act of 2002, P.L. 107-210," preceding "or when the claimant leaves work" in 6.

12:17-21.3 Request for separation information

(a) For an employer to obtain relief of benefit charges, he or she shall complete the Department form entitled, "Notice to Employer of Monetary Determination and Request for Separation Information," and additional requests for separation information, where determined necessary by the Division. The separation information shall include a comprehensive statement of facts surrounding the separation from work. The Department form entitled, "Notice to Employer of Monetary Determination and Request for Separation Information," shall be completed and returned to the office that initiated the request within 10 calendar days after the date upon which the form requesting information was mailed. Any additional separation information requested by the Division shall be completed and returned to the office that initiated the request within 21 calendar days after the date upon which the request was mailed.

(b) Relief of benefit charges shall not be granted if either the Department form entitled, "Notice to Employer of Monetary Determination and Request for Separation Information" is not received by the Division or postmarked within 10 calendar days after the date upon which the form requesting information was mailed, or if any additional separation information requested by the Division is not received or postmarked within 21 calendar days after the date upon which

the request for additional information was mailed, unless the employer shows good cause for failing to do so.

(c) For purposes of this section, “good cause” means any situation over which the employer did not have control and which was so compelling as to prevent the employer from providing information as required by the Division.

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), deleted “and” following “Form BC-3E” in the third sentence; in (b), substituted “Division” for “local claims office” preceding “or postmarked within 10 calendar days” and deleted “by the local claims office” preceding “or postmarked within 21 calendar days”.

Amended by R.2009 d.21, effective January 5, 2009.

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

In (a), substituted “the Department form entitled, ‘Notice’ for “Form BC-3E, Notice”, “Information,” and” for “Information, and”, “Department form entitled, ‘Notice to Employer of Monetary Determination and Request for Separation Information,’ ” for “Form BC-3E”; and in (b), substituted “Department form entitled, ‘Notice to Employer of Monetary Determination and Request for Separation Information’ ” for “Form BC-3E”, and “within 21” for “with 21”.

12:17-21.4 Misrepresentation or false information

(a) An employer or any officer or agent of an employing unit who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact, to reduce benefit charges to the employing unit pursuant to N.J.S.A. 43:21-7(c)(1), shall be liable for a fine of \$1,000 to be recovered in an action at law in the name of the Division or as provided in N.J.S.A. 43:21-14(e).

1. Each false statement or representation or failure to disclose a material fact, and each day of that failure or refusal, shall constitute a separate offense.

2. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in N.J.S.A. 43:21-1 et seq.

12:17-21.5 Determination and appeals

The Division shall notify employers in writing of the determinations made regarding their requests for relief from charges within a reasonable time period. Such notice shall include a statement of the right of the employer to appeal the determination in accordance with N.J.A.C. 1:12 and 12:20 concerning appeals to the Appeal Tribunal and Board of Review for unemployment benefit determinations.

SUBCHAPTER 22. CLAIMS FOR FAMILY LEAVE INSURANCE BENEFITS DURING UNEMPLOYMENT

12:17-22.1 Definitions

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

“Bond” or “bonding” with a newborn child or newly adopted child means to develop a psychological and emotional attachment between a child and his or her primary care giver(s). The development of this attachment or bond between child and care giver(s) requires being in one another’s presence.

“Care” means, but is not limited to, physical care, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters and personal attendant services.

“Care giver” means the family member who is providing the required care. This term is used interchangeably with “claimant.”

“Care recipient” means the family member who is receiving care for a serious health condition or the newborn child or newly adopted child with whom the “care giver” is bonding.

“Child” means a biological, adopted, or foster child, step-child or legal ward of a covered individual, child of a domestic partner of the covered individual, or child of a civil union partner of the covered individual, who is less than 19 years of age or is 19 years of age or older but incapable of self-care because of mental or physical impairment.

As used in this definition, “incapable of self-care” means that the individual requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

As used in this definition, “mental or physical impairment” means: 1. any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or 2. any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

“Civil union” means a civil union as defined in N.J.S.A. 37:1-29.

“Covered individual” or “employee” means any individual who is in employment, as the term “employment” is defined at N.J.S.A. 43:21-19(i)(1) or any individual who has been out of such employment for less than two weeks.