

CHAPTER 17

UNEMPLOYMENT BENEFIT PAYMENTS

Authority

N.J.S.A. 43:21-1 et seq.

Source and Effective Date

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).

Executive Order No. 66(1978) Expiration Date

Chapter 17, Unemployment Benefit Payments, expires on June 1, 2003.

Chapter Historical Note

Subchapter 3, Definitions; Subchapter 4, Employer Records and Evidence Concerning Partial Unemployment; and Subchapter 5, Claim for Partial Unemployment Benefits, were filed 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Chapter 17, Unemployment Benefit Payments, was repealed and adopted as new rules by R.1998 d.273, effective June 1, 1998 (operative July 5, 1998).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: Source and Effective Date.

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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 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.

(b) Where a union or employment contract calls for a vacation or holiday period with pay and permits the employer to close its operations for a specified period, the employees shall be ineligible for benefits. However, any employee who does not receive pay for the contractual vacation period or any part thereof may receive unemployment benefits if otherwise eligible.

(c) The receipt of a lump sum payment at termination representing unused accrued vacation leave is not a bar to the receipt of unemployment benefits.

12:17-8.11 Sick leave pay

(a) An individual who receives periodic sick leave payments from an employer is considered employed and is ineligible for unemployment benefits because the claim is invalid.

(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.

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 or other relatives;
8. Voluntary retirement;
9. To accept other work; or
10. Incarceration.

Case Notes

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.

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.

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

(a) 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 four weeks. For purposes of this section, imminent layoff or discharge is one in which the individual will be separated within four weeks.

(b) An individual who leaves due to an imminent layoff or discharge shall be considered to have withheld his or her services from the employer and shall be deemed unavailable for work and ineligible for benefits for such period.

12:17-9.6 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.

12:17-9.7 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.

12:17-9.8 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.

12:17-9.9 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.

12:17-9.10 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 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.

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, within the individual's control, 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.

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. 12:17-9.10.

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 committed an act of misconduct where it is established that he or she:

1. Refused 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.

12:17-10.7 Discharge or suspension for unsatisfactory work performance

An individual's failure to meet the employer's standard(s) relating to quantity or quality of work shall be considered misconduct if it is established that he or she deliberately performed below the standard(s), and that the standard(s) was reasonable.

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 even though the violation has not endangered the safety or property of the individual, employer, fellow employees or the general public.

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 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:

i. Eighty percent of the claimant's average weekly wage (including the value of employee benefits) during the base year if the offer made is during the first 20 consecutive weeks of unemployment benefits;

ii. Seventy percent of the claimant's average weekly wage (including the value of the employee benefits) during the base year after the twentieth consecutive week of unemployment benefits.

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.

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