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CHAPTER 122

An Act concerning eligibility of certain education employees for unemployment benefits and amending R.S.43:21-4.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. R.S.43:21-4 is amended to read as follows:

Benefit eligibility conditions.

43:21-4. Benefit eligibility conditions. An unemployed individual shall be eligible to receive benefits with respect to any week eligible only if:

(a) The individual has filed a claim at an unemployment insurance claims office and thereafter continues to report at an employment service office or unemployment insurance claims office, as directed by the division in accordance with such regulations as the division may prescribe, except that the division may, by regulation, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs, and as to such other types of cases or situations with respect to which the division finds that compliance with such requirements would be oppressive, or would be inconsistent with the purpose of this act; provided that no such regulation shall conflict with subsection (a) of R.S.43:21-3.

(b) The individual has made a claim for benefits in accordance with the provisions of subsection (a) of R.S.43:21-6.

(c) (1) The individual is able to work, and is available for work, and has demonstrated to be actively seeking work, except as hereinafter provided in this subsection or in subsection (f) of this section.

(2) The director may modify the requirement of actively seeking work if such modification of this requirement is warranted by economic conditions.

(3) No individual, who is otherwise eligible, shall be deemed ineligible, or unavailable for work, because the individual is on vacation, without pay, during said week, if said vacation is not the result of the individual's own action as distinguished from any collective action of a collective bargaining agent or other action beyond the individual's control.

(4) (A) Subject to such limitations and conditions as the division may prescribe, an individual, who is otherwise eligible, shall not be deemed unavailable for work or ineligible because the individual is attending a training program approved for the individual by the division to enhance the individual's employment opportunities or because the individual failed or refused to accept work while attending such program.

(B) For the purpose of this paragraph (4), any training program shall be regarded as approved by the division for the individual if the program and the individual meet the following requirements:

(i) The training is for a labor demand occupation and is likely to enhance the individual's marketable skills and earning power, except that the training may be for an occupation other than a labor demand occupation if the individual is receiving short-time benefits pursuant to the provisions of P.L.2011, c.154 (C.43:21-20.3 et al.) and the training is necessary to prevent a likely loss of jobs;

(ii) The training is provided by a competent and reliable private or public entity approved by the Commissioner of Labor and Workforce Development pursuant to the provisions of section 8 of the "1992 New Jersey Employment and Workforce Development Act," P.L.1992, c.43 (C.34:15D-8);

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

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

(v) The individual enrolls in vocational training, remedial education or a combination of both on a full-time basis, except that the training or education may be on a part-time basis if the individual is receiving short-time benefits pursuant to the provisions of P.L.2011, c.154 (C.43:21-20.3 et al.).

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

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

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

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

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

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

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

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

For purposes of this paragraph, "immediate family member" includes any of the following individuals: father, mother, mother-in-law, father-in-law, grandmother, grandfather, grandchild, spouse, child, child placed by the Division of Youth and Family Services in the Department of Children and Families, sister or brother of the unemployed individual and any relatives of the unemployed individual residing in the unemployed individual's household.

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

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

(A) The individual has completed the reemployment services; or

(B) There is justifiable cause for the failure to participate, which shall include participation in employment and training, self-employment assistance activities or other activities authorized by the division to assist reemployment or enhance the marketable skills and earning power of the individual and which shall include any other circumstance indicated pursuant to this section in which an individual is not required to be available for and actively seeking work to receive benefits.

(9) An unemployed individual, who is otherwise eligible, 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 elections on an election day.

(10) An individual who is employed by a shared work employer and is otherwise eligible for benefits shall not be deemed ineligible for short-time benefits because the individual is unavailable for work with employers other than the shared work employer, so long as:

(A) The individual is able to work and is available to work the individual's normal full-time hours for the shared work employer; or

(B) The individual is attending a training program which is in compliance with the provisions of paragraph (4) of subsection (c) of this section and the agreements and certifications required pursuant to the provisions of section 2 of P.L.2011, c.154 (C.43:21-20.4).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The individual is taking family temporary disability leave to provide care for a family member with a serious health condition or to be with a child during the first 12 months after the child's birth or placement of the child for adoption or as a foster child with the individual, and the individual would be eligible to receive benefits under R.S.43:21-1 et seq. (without regard to the maximum amount of benefits payable during any benefit year) except for the individual's unavailability for work while taking the family temporary disability leave, and the individual has furnished notice and proof of claim to the division, in accordance with its rules and regulations, and payment is not precluded by the provisions of R.S.43:21-3(d) provided, however, that benefits paid under this subsection (f) shall be

computed on the basis of only those base year wages earned by the claimant as a "covered individual," as defined in subsection (b) of section 3 of P.L.1948, c.110 (C.43:21-27); provided further that no benefits shall be payable under this subsection to any individual:

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

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

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

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

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

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

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

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

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

(4) With respect to any services described in paragraphs (1) and (2) above, benefits shall not be paid as specified in paragraphs (1), (2), and (3) above to any individual who performed those services in an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing those services to one or more educational institutions;

(5) As used in this subsection (g) in order for there to be a "reasonable assurance" all of the following requirements shall be met:

(A) The educational institution has made an offer of employment in the following academic year or term that is either written, oral, or implied;

(B) The offer of employment in the following academic year or term was made by an individual with actual authority to offer employment;

(C) The employment offered in the following academic year or term shall be in the same capacity;

(D) The economic conditions of the employment offered may not be considerably less in the following academic year or term than in the then current academic year or term. For the purpose of this paragraph, "considerably less" means that the claimant will earn less than 90 percent of the amount the claimant earned in the then current academic year or term;

(E) The offer of employment in the following academic year or term is not contingent upon a factor or factors that are within the educational institution's control, including but not limited to, course programming, decisions on how to allocate available funding, final course offerings, program changes, and facility availability; and

(F) Based on a totality of the circumstances, it is highly probable that there is a job available for the claimant in the following academic year or term. If a job offer contains a contingency, primary weight should be given to the contingent nature of the offer of employment. Contingencies that are not necessarily within the educational institution's control, such as funding, enrollment and seniority,

may be taken into consideration but the existence of any one contingency should not determine whether it is highly probable that there is a job available for the claimant in the following academic year or term.

(6) Determinations by the department whether claimants have a "reasonable assurance" shall be done on a case-by-case basis.

(7) Each educational institution shall provide the following to the department, in a form, including electronic form, prescribed by the commissioner, no less than 10 business days prior to the end of the academic year or term:

(A) A list of all employees who the educational institution has concluded do not have a reasonable assurance of employment in the following academic year or term, along with information prescribed by the commissioner regarding each such employee, which information shall include, but not be limited to, name and social security number; and

(B) For each employee that the educational institution maintains does have a reasonable assurance of employment in the following academic year or term, a statement explaining the manner in which the employee was given a reasonable assurance of employment, that is, whether it was in writing, oral, or implied, and what information about the offer, including contingencies, was communicated to the individual.

(8) The statement required under subparagraph (B) of paragraph (7) of this subsection (g) may be used by the department in its analysis under paragraphs (5) and (6) of this subsection (g), but it does not conclusively demonstrate that the claimant has a reasonable assurance of employment in the following academic year or term.

(9) Failure of an educational institution to provide the statement required under subparagraph (B) of paragraph (7) of this subsection (g) not less than 10 business days prior to the end of the academic year or term shall result in a rebuttable presumption that the claimant does not have a reasonable assurance of employment in the following academic year or term. This rebuttable presumption shall give rise to an inference that the claimant does not have a reasonable assurance of employment in the following academic year or term, but shall not conclusively demonstrate that the claimant does not have a reasonable assurance of employment in the following academic year or term.

(10) If any part of P.L.2020, c.122 is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the State or the eligibility of employers in this State for federal unemployment tax credits, the conflicting part of that act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the State or the granting of federal unemployment tax credits to employers in this State.

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

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

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

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

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

2. This act shall take effect immediately.

Approved November 10, 2020.

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