

## CHAPTER 62

AN ACT concerning certain unemployment insurance benefit claims and amending R.S.43:21-6.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. R.S.43:21-6 is amended to read as follows:

Claims for benefits.

43:21-6. (a) Filing. (1) Claims for benefits shall be made in accordance with such regulations as the Director of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development of the State of New Jersey may approve. Each employer shall post and maintain on his premises printed notices of his subject status, of such design, in such numbers and at such places as the director of the division may determine to be necessary to give notice thereof to persons in the employer's service. Each employer shall give to each individual at the time he becomes unemployed, for any reason, whether the unemployment is permanent or temporary, a printed copy of benefit instructions. The benefit instructions given to the individual shall include, but not be limited to, the following information: (A) the date upon which the individual becomes unemployed, and, in the case that the unemployment is temporary, to the extent possible, the date upon which the individual is expected to be recalled to work; and (B) that the individual may lose some or all of the benefits to which he is entitled if he fails to file a claim in a timely manner. Both the aforesaid notices and instructions, including information detailing the time sensitivity of filing a claim, shall be supplied by the division to employers without cost to them. Nothing in this section shall be construed so as to require an employer to re-hire an individual formerly in the employer's service.

(2) Any claimant may choose to certify, cancel or close his claim for unemployment insurance benefits at any time, 24 hours a day and seven days a week, via the Internet on a website developed by the division; however, any claim that is certified, cancelled or closed after 7:00 PM will not be processed by the division until the next scheduled posting date.

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

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

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

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

The deputy shall promptly make an initial determination based upon the available information. The initial determination shall show the weekly benefit amount payable, the maximum duration of benefits with respect to the employer to whom the determination

relates, and the ratio of benefits chargeable to the employer's account for benefit years commencing on or after July 1, 1986, and also shall show whether the claimant is ineligible or disqualified for benefits under the initial determination. The claimant and the employer whose account may be charged for benefits payable pursuant to said determination shall be promptly notified thereof.

Whenever an initial determination is based upon information other than that supplied by an employer because such employer failed to respond to the deputy's request for information, such initial determination and any subsequent determination thereunder shall be incontestable by the noncomplying employer, as to any charges to his employer's account because of benefits paid prior to the close of the calendar week following the receipt of his reply. Such initial determination shall be altered 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 reply shall be paid in accordance with such altered initial determination.

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

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

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

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

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

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

Unless the claimant or any interested party, within seven calendar days after delivery of notification of an initial determination or within 10 calendar days after such notification was mailed to his or their last-known address and addresses, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith, except for such determinations as may be altered in benefit amounts or duration as provided in this paragraph. Benefits payable for periods pending an appeal and not in dispute shall be paid as such benefits accrue; provided that insofar as any such appeal is or may be an appeal from a determination to the effect that the claimant is disqualified under the provisions of R.S.43:21-5 or any amendments thereof or supplements thereto, benefits pending determination of the appeal shall be withheld only for the period of disqualification as provided for in said section, and notwithstanding such appeal, the benefits otherwise provided by this act shall be paid for the period subsequent to such period of disqualification; and provided, also, that if there are two determinations of entitlement, benefits for the period covered by such determinations shall be paid regardless of any appeal which may thereafter be taken, but no employer's account shall be charged with benefits so paid, if the decision is finally reversed.

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

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

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

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

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

(e) Board of review. The board of review may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The board of review shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is not

unanimous and from any determination which has been overruled or modified by any appeal tribunal. The board of review may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceedings so removed to the board of review shall be heard by a quorum thereof in accordance with the requirements of subsection (c) of this section. The board of review shall promptly notify the interested parties of its findings and decision.

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

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

(h) Court review. Any decision of the board of review shall become final as to any party upon the mailing of a copy thereof to such party or to his attorney, or upon the mailing of a copy thereof to such party at his last-known address. The Division of Unemployment and Temporary Disability Insurance and any party to a proceeding before the board of review may secure judicial review of the final decision of the board of review. Any party not joining in the appeal shall be made a defendant; the board of review shall be deemed to be a party to any judicial action involving the review of, or appeal from, any of its decisions, and may be represented in any such judicial action by any qualified attorney, who may be a regular salaried employee of the board of review or has been designated by it for that purpose, or, at the board of review's request, by the Attorney General.

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

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

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

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

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

For purposes of subsection (j) of this section:

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

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

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

2. This act shall take effect on the 120th day after enactment.

Approved November 14, 2016.