

New Jersey Unemployment Compensation Law

New Jersey's unemployment compensation law, like that of many other states, provides temporary payments to employees who lose their jobs through no fault of their own. The program draws from a public policy that assumes "unemployment is a serious menace to the health, morals and welfare" of the citizens of New Jersey and is aimed at lightening the job-loss burden for workers and their families.

The New Jersey Department of Labor and Workforce Development administers the law through its Division of Unemployment Insurance (www.state.nj.us/labor/ui/uiindex.html). The law is complex and in some cases holds employers liable for unemployment insurance (UI) payments even when former employees weren't fired but quit their jobs.

The law requires employers to inform employees about the state's unemployment compensation program anytime they're "separated from work for any reason," including a plant/office vacation or holiday shutdown lasting at least seven days. If you plan a mass layoff (defined by New Jersey as affecting 25 or more employees), you must notify the nearest unemployment office at least 48 hours in advance. You must also contact that office in the event of a strike or other work stoppage.

Employees who are eligible for UI payments are entitled to 60 percent of their average weekly wage, up to a maximum of \$521 per week, and can ordinarily collect payments for up to 26 weeks. Employees who find part-time work while on unemployment may still be eligible; however, their payment will be reduced dollar for dollar once they earn at least 20 percent of their weekly benefit from a part-time job.

For example, someone receiving \$500 per week in unemployment can earn up to \$100 per week in a part-time job without any reduction in UI benefits. Beyond that amount, every dollar earned means a dollar in reduced benefits.

As a general rule, former employees are eligible for unemployment compensation when they're not responsible for their dismissal. In other words, unless you fired someone for cause, he or she is probably eligible for unemployment benefits.

When you terminate an employee, the burden of proof is on you. That may sound simple, but it isn't. New Jersey has two definitions of misconduct: regular and gross. Those guilty of regular misconduct may collect payments after being off work for five weeks; those fired for "gross" misconduct aren't eligible for UI benefits.

You must state the reason for a discharge or termination if you intend to claim that an employee was guilty of misconduct. Be prepared to prove that you fired the former employee for a solid reason (for cause), such as stealing, cheating, a safety infraction, harassment or discrimination. To obtain the required form to fill out, contact the Division of Unemployment Insurance.

Employees who quit may still be eligible for benefits, but the burden of proof is on them to show that they quit "for good cause" connected to their employment.

As the employer, you will receive notice when the Division of Unemployment Insurance determines a former employee eligible for benefits. You then have the right to appeal the decision. Your response must be postmarked within seven days of the date you received the notice or 10 days after the agency mailed it. These are tight deadlines so don't delay.

Tricky scenarios for eligibility

Here are some common tricky situations in which employees who quit or are fired can sometimes collect unemployment benefits.

Regular misconduct. An employee who's fired for regular misconduct (violating a company rule or policy) isn't entitled to receive benefits right away. However, he can start collecting benefits about six weeks later (five weeks after the week of his discharge).

Gross misconduct. Employees who are fired for gross misconduct, such as a crime under New Jersey law, can't collect unemployment. *Exception:* Fired employees who take another job will again become eligible if their new employer discharges them through no fault of their own. To qualify, they must have worked at least four weeks at the new job and earn at least six times the weekly benefit they would have been entitled to had their former employer not fired them for gross misconduct.

Trailing spouse. In this day and age of dual-career families, a husband or wife may quit a job when the spouse accepts a position in another city or state. While some states do allow unemployment benefits for a trailing spouse, New Jersey doesn't consider this a good cause connected with work. Therefore, the trailing spouse wouldn't be eligible for benefits.

Retirement pay. Employees who are eligible for social security retirement payments can still collect unemployment benefits. If they begin collecting on a company-sponsored retirement plan, however, their weekly benefits may be reduced:

- If the company and the employee both contributed to the retirement plan, weekly unemployment benefits would be reduced by 50 percent.
- If the employer contributed 100 percent to the retirement plan (such as a defined benefit plan), the employee couldn't collect unemployment.
- If the employee contributed 100 percent to the plan (such as a company-sponsored 401(k) with no employer match), he would be eligible for the entire weekly UI payment.

Visa holders. Foreigners working in the United States on H-1B visas aren't eligible for UI benefits if they're permanently terminated. That's because H-1B visa holders are authorized to work for only one employer and thus aren't ready, willing and able to seek other employment. But if the same workers are only temporarily laid off and have a specific return date, they can collect unemployment.

Ready and able to work. To be eligible for UI benefits, claimants must be physically and mentally capable of working. So, if a person on unemployment is hurt in a car accident, he or she won't be eligible for benefits until being cleared to return to work. The person may qualify, however, for temporary disability payments.

Elder care, child care and transportation. Claimants who must care for family members or don't have transportation to and from work may not be eligible for benefits. Because their time commitments and transportation problems prevent them from accepting a job immediately, they're not ready and able to work.

Active job search. To receive UI payments, claimants must be actively seeking work: i.e., contacting at least three employers per week about job openings. Some claimants may be asked to keep records of their attempts to find a job.

Refusing a job offer. Claimants who refuse to accept a job offer may lose their benefits for four weeks. In addition, they may have to accept less money or a different type of job if they've been unemployed for a long time.

Job transfer. If an employer asks an employee to transfer to another location as a condition of staying employed, the person may quit and still be able to collect unemployment. Such situations are considered on an individual basis and depend on whether the move will create an undue hardship on the employee.

Representing your organization at a hearing

Employers should carefully consider whether they want to contest an unemployment claim and, ideally, consult an employment-law expert about the best course of action.

That's true especially if you suspect the employee might file a discrimination lawsuit against your company. What you say about your organization's actions can come back to haunt you, especially if the former employee's attorney uses the relatively low-stakes unemployment setting to fish for information for a lawsuit against you. What you say about why you fired an employee may bind you in a later, high-stakes lawsuit.

For example, if you testify that you fired an employee because of frequent absences, the records you produce could be used later to show you violated the Family and Medical Leave Act counting his or her sick-child call-off as an unexcused absence.

That's why it's best to run your expected testimony and documentary evidence by an attorney before you represent your employer in a hearing. You don't want to say anything that could turn into ammunition against you later, or be silent about something that will prevent you from putting on evidence later.

Sometimes, it may be best to have an attorney handle the entire UI case. Other times, if you and your attorney think there's a good chance that the former employee will file a state or federal discrimination lawsuit, it may be better to forgo a hearing to avoid showing your cards too early. Not contesting an unemployment claim won't prevent you later from showing you fired the employee for a legitimate reason.

Excerpted from New Jersey's 10 Most Critical Employment Laws, a special bonus report available to subscribers of HR Specialist: [New Jersey Employment Law](#).