

New Jersey Law Further Expands Striking Workers' Eligibility for Unemployment Benefits

Article By:

Michael J. Riccobono

Eric C. Stuart

On April 24, 2023, New Jersey Governor Phil Murphy signed legislation further expanding the circumstances under which striking workers can collect unemployment insurance (UI) benefits. This followed legislation Governor Murphy [previously signed into law in 2018](#) allowing striking workers to collect UI benefits under a variety of different circumstances never before allowed under New Jersey's Unemployment Compensation Law. The continued expansion of unemployment benefits for workers engaging in a strike against their employer uses state funds to subsidize labor disputes and may negatively impact the state's economy.

Quick Hits

- **A recent New Jersey enactment has expanded the conditions under which striking workers may collect UI benefits.**
- **The law has decreased the waiting period before UI benefits may be paid from thirty days to fourteen days, among other amendments.**
- **The law took effect on April 24, 2023, and applies retroactively to all UI benefit claims filed on or after January 1, 2022.**

The new law does the following:

- First, it decreases from thirty days to fourteen days the waiting period "following the commencement of unemployment caused by a labor dispute before which UI benefits may be paid." In addition, the law now provides that benefits must be paid to claimants *immediately*, even during the fourteen-day period, if replacement workers are hired to take the positions of the claimants, whether or not the replacement workers are purported to be "permanent."

-
- Second, it provides that the fourteen-day waiting period does not apply (1) if the labor dispute has not resulted in a “stoppage of work” or (2) when the employer engages the services of a replacement worker for a claimant’s position, whether on a permanent or temporary basis, or uses an existing worker reassigned permanently or temporarily to perform the duties of the claimant.
 - “Stoppage of work” is defined under the law as a “substantial curtailment of work which is due to a labor dispute, during which less than 80% of the normal production of goods or services is met.” In that case, “a claim for [UI] benefits may not be disqualified” unless (1) “the employer documents to the satisfaction of the [New Jersey Department of Labor] that less than 80% of the normal production of goods or services has been met”; and (2) “none of the circumstances indicated as preventing disqualification ... are applicable to the claim.”
 - Third, it “[c]larifies that there is no disqualification of a claim due to a labor dispute if an issue in the labor dispute is a failure or refusal of the employer to comply with an agreement or contract between the employer and the claimant, including a collective bargaining agreement with a union representing the claimant, or a failure or refusal to comply with a State or federal law pertaining to hours, wages, or other conditions of work, even if the failure or refusal is not the only issue in the labor dispute.”
 - Fourth, it “removes the penalty of up to \$750 per week against employers who state that a replacement worker is not ‘permanent’ but fail[] to rehire the replaced worker” when the dispute ends.
 - Finally, it allows the payment of UI benefits when employees have been locked out by their employer, “even if there was not a strike immediately preceding the lockout.”

This law took effect immediately and applies retroactively to all UI benefit claims filed on or after January 1, 2022.

Final Thoughts

Strikes and lockouts should always be a last resort when, despite best efforts, labor and management are unable to resolve a labor contract or related dispute. Making it easier and advantageous for strikers to receive unemployment benefits may cause strikes in New Jersey to become more prevalent and last longer. Workers who may consider voluntarily withholding their labor through striking now have more incentive to do so and with reduced risk of wage loss. Employers may be concerned that their unemployment tax payments are more likely to finance strikes and labor disputes that present an existential challenge to their business operations. Only time will tell how enhancing employee leverage against employers impacts the climate for business growth and development in New Jersey.

© 2024, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., All Rights Reserved.

National Law Review, Volumess XIII, Number 191

Source URL: <https://natlawreview.com/article/new-jersey-law-further-expands-striking-workers->

[eligibility-unemployment-benefits](#)