

One Minute Memo®



Striking Workers Are Now Eligible For Unemployment Benefits In New Jersey

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Seyfarth Synopsis: On August 10, 2018, Governor Phil Murphy signed a law that would permit striking workers to collect unemployment benefits in New Jersey. The law covers any claim for a period of unemployment commencing on or after July 1, 2018.

The bill amends New Jersey's unemployment insurance law and provides that an employee is eligible for unemployment benefits because of a labor dispute if the labor dispute is caused by the failure or refusal of the employer to comply with an agreement or contract between the employer and the employee, including a collective bargaining agreement. In addition, if unemployment is caused by a labor dispute, including a strike or other concerted employee activities, but not by a lockout or a labor dispute caused by the employer's non-compliance, the striking employee is entitled to unemployment benefits after a thirty (30) day waiting period. If the employer does not allow the striking employee to return to work or if the employer hires permanent replacement workers, the thirty (30) day waiting period shall not apply.

Notably, a replacement worker shall be presumed permanent unless the employer certifies in writing that the striking employee will be permitted to return to his or her prior position upon conclusion of the strike. If the employer does not permit the employee to return, the striking employee shall be entitled to recover any benefits lost as a result of the thirty (30) day waiting period before receiving benefits. Additionally, the State may also impose a penalty upon the employer of up to \$750 per employee per week of benefits lost. The penalty is payable to the unemployment insurance fund.

State lawmakers introduced similar legislation two years ago, however, then Governor Chris Christie vetoed that bill, noting that "striking workers, no matter what effect their actions have on the operations of their employer, by definition, cause their own unemployment by choosing not to work." In addition, Governor Christie believed that unemployment insurance law "should not be used as a tool to give labor organizations additional leverage in labor negotiations." Under Governor Murphy this pro-union bill was given a second chance. The Assembly passed the bill by a vote of 48-25 in June followed by a 23-14 vote in the Senate shortly thereafter.

New Jersey joins New York - which has a 49 day waiting period - and several other states in offering unemployment benefits to striking workers. Legislation such as this that has been enacted since Governor Murphy was sworn into office continues to signal to employers that increased employee protections will be of paramount importance to Governor Murphy's regime.

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