

§1192. Eligibility conditions**(CONFLICT)**

An unemployed individual shall be eligible to receive benefits with respect to any week only if: [PL 1979, c. 651, §22 (AMD).]

1. Has claim for benefits. The individual has made a claim for benefits with respect to such week or part thereof in accordance with such rules as the commissioner may prescribe; [PL 2021, c. 456, §17 (AMD).]

2. Has registered for work. The individual has registered for work at, and continued to report at, an employment office in accordance with rules the commissioner adopts, except that the commissioner may, by rule, 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 commissioner finds that compliance with the requirements would be oppressive, or would be inconsistent with the purposes of this chapter. A rule under this subsection may not conflict with section 1191, subsection 1.

The individual must actively seek work each week in which a claim for benefits is filed unless the individual is participating in approved training under subsection 6 or work search has been waived in accordance with rules adopted by the commissioner and provide evidence of work search efforts in a manner and form as prescribed by the Department of Labor. Failure to provide required work search documentation results in a denial of benefits in accordance with section 1194, subsection 2 for the week or weeks for which no documentation was provided unless the department determines there is good cause for the individual's failure to comply with this requirement; [PL 2021, c. 456, §18 (AMD).]

3. (CONFLICT: Text as amended by PL 2021, c. 348, §39) Is able and available for work. The individual is able to work and is available for full-time work at the individual's usual or customary trade, occupation, profession or business or in such other trade, occupation, profession or business for which the individual's prior training or experience shows the individual to be fitted or qualified, as long as the geographic region in which the work will take place is not greater than 35 miles from the individual's primary residence; and in addition to having complied with subsection 2 is actively seeking work in accordance with the regulations of the commission; except that no ineligibility may be found solely because the claimant is unable to accept employment on a shift, the greater part of which falls between the hours of midnight to 5 a.m., and is unavailable for that employment because of parental obligation, the need to care for an immediate family member or the unavailability of a personal care attendant required to assist the unemployed individual who has a disability; and except that an unemployed individual who is neither able nor available for work due to good cause as determined by the deputy is eligible to receive prorated benefits for that portion of the week during which the individual was able and available.

A. Notwithstanding this subsection, beginning January 1, 2004, an individual who is not available for full-time work as required in this subsection is not disqualified from receiving benefits if:

(1) The individual worked less than full time for a majority of the weeks during that individual's base period and the individual is able and available for and actively seeking part-time work for at least the number of hours in a week comparable to those customarily worked in part-time employment during that individual's base period; or

(2) The individual worked full time for a majority of the weeks during that individual's base period, but is able and available for and actively seeking only part-time work because of the illness or disability of an immediate family member or because of limitations necessary for the safety or protection of the individual or individual's immediate family member. [PL 2007, c. 352, Pt. C, §1 (AMD).]

[PL 2021, c. 348, §39 (AMD).]

3. (CONFLICT: Text as amended by PL 2021, c. 456, §19) Is able and available for work.

The individual is able to work and is available for full-time work at the individual's usual or customary trade, occupation, profession or business or in such other trade, occupation, profession or business for which the individual's prior training or experience shows the individual to be fitted or qualified, as long as the geographic region in which the work will take place is not greater than 35 miles from the individual's primary residence; and in addition to having complied with subsection 2 is actively seeking work in accordance with the rules of the commissioner; except that no ineligibility may be found solely because the claimant is unable to accept employment on a shift, the greater part of which falls between the hours of midnight to 5 a.m., and is unavailable for that employment because of parental obligation, the need to care for an immediate family member or the unavailability of a personal care attendant required to assist the unemployed individual who is a person with a disability; and except that an unemployed individual who is neither able nor available for work due to good cause as determined by the deputy is eligible to receive prorated benefits for that portion of the week during which the individual was able and available.

A. Notwithstanding this subsection, beginning January 1, 2004, an individual who is not available for full-time work as required in this subsection is not disqualified from receiving benefits if:

(1) The individual worked less than full time for a majority of the weeks during that individual's base period and the individual is able and available for and actively seeking part-time work for at least the number of hours in a week comparable to those customarily worked in part-time employment during that individual's base period; or

(2) The individual worked full time for a majority of the weeks during that individual's base period, but is able and available for and actively seeking only part-time work because of the illness or disability of an immediate family member or because of limitations necessary for the safety or protection of the individual or individual's immediate family member. [PL 2007, c. 352, Pt. C, §1 (AMD).]

[PL 2021, c. 456, §19 (AMD).]

4. Has served a waiting period.

[PL 1975, c. 8 (RP).]

4-A. Has served a waiting period. For each eligible individual establishing a benefit year on or after May 10, 1981, he has served a waiting period of one week of total or partial unemployment. No week may be counted as a week of total or partial unemployment for the purpose of this subsection:

A. If benefits have been paid with respect to that week; [PL 1981, c. 220 (NEW).]

B. Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits; and [PL 1981, c. 220 (NEW).]

C. Unless the individual was eligible for benefits with respect to that week, as provided in this section and section 1193, except for the requirements of this subsection; [PL 1981, c. 220 (NEW).]

[PL 1981, c. 220 (NEW).]

5. Has earned wages. For each eligible individual establishing a benefit year on or after January 1, 1980, the individual has been paid wages equal to or exceeding 2 times the annual average weekly wage for insured work in each of 2 different quarters in the individual's base period and has been paid total wages equal to or exceeding 6 times the annual average weekly wage in the individual's base period for insured work. The annual average weekly wage amount to be used for purposes of this subsection is that which is applicable at the time the individual files a request for determination of insured status. For the purpose of this subsection, wages are counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date

on which the employer by whom such wages were paid has satisfied the conditions of section 1043, subsection 9, or section 1222, subsection 3, with respect to becoming an employer; provided that no individual may receive benefits in a benefit year, unless, subsequent to the beginning of the next preceding benefit year during which that individual received benefits, that individual performed services and earned remuneration for such service in an amount equal to not less than 8 times that individual's weekly benefit amount in employment by an employer in the benefit year being established. This subsection applies only to any individual requesting determination of insured status on and after January 1, 1972. In determining a claimant's qualification under this subsection, payments pursuant to former Title 39, sections 54 and 55, the Workers' Compensation Act, and former Title 39, sections 188 and 189, Title 39-A, sections 608 and 609, the Occupational Disease Law, are considered wages for insured work.

[PL 1991, c. 885, Pt. E, §39 (AMD); PL 1991, c. 885, Pt. E, §47 (AFF).]

6. Approved training. Notwithstanding any other provisions of this chapter to the contrary, any otherwise eligible claimant in training, as approved for the claimant by the deputy, under rules adopted by the commissioner, may not be denied benefits for any week with respect to subsection 3, relating to availability and the work search requirement or the provisions of section 1193, subsection 3. Enrollment in a degree-granting program may not be the sole cause for denial of approved training status for an otherwise eligible claimant. Benefits paid to any eligible claimant while in approved training, for which, except for this subsection, the claimant could be disqualified under section 1193, subsection 3, may not be charged against the experience rating record of any employer but must be charged to the General Fund. For purposes of this subsection, "the deputy" means a representative from the bureau designated by the commissioner.

[PL 2021, c. 456, §20 (AMD).]

6-A. Prohibition against disqualification of individuals in approved training under the United States Trade Act of 1974. Notwithstanding any other provisions of this chapter, no otherwise eligible individual may be denied benefits for any week because the individual is in training approved under 19 United States Code, Section 2296(a) or under any amendment or addition to the United States Trade Act of 1974, nor may that individual be denied benefits by reason of leaving work to enter that training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in this chapter, or any applicable federal unemployment compensation law, relating to availability for work, active search for work or refusal to accept work. Benefits paid to any eligible claimant while in such training for which, except for this subsection, the claimant could be disqualified under section 1193, subsection 1 or 3, may not be charged against the experience rating record of any employer but must be charged to the General Fund.

For purposes of this subsection, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the United States Trade Act of 1974, and wages for such work at not less than 80% of the individual's average weekly wage as determined for the purposes of the United States Trade Act of 1974.

[PL 2009, c. 466, §2 (AMD).]

6-B. Prohibition against disqualification of individuals in approved training under United States Public Law 97-300. Notwithstanding any other provisions of this chapter, the acceptance of training for such opportunities as are available through United States Public Law 97-300 shall be deemed to be acceptance of training with the approval of the State within the meaning of any other provisions of federal or state law relating to unemployment benefits.

[PL 1983, c. 510 (NEW).]

6-C. Prohibition against disqualification of individuals in approved training under section 1196. Notwithstanding any other provision of this chapter to the contrary, no otherwise eligible individual may be denied benefits for any week because that individual is in training as approved by

the deputy, under rules adopted by the commissioner, nor may that individual be denied benefits by reason of leaving work to enter that training, as long as the work left is not suitable employment.

For purposes of this subsection, "suitable employment" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, and "the deputy" means a representative from the bureau designated by the commissioner.

[PL 2021, c. 456, §21 (AMD).]

6-D. Prohibition against disqualification of individuals in approved training. Notwithstanding any provisions of this chapter, the acceptance of training for opportunities available under sections 2031 and 2033 is deemed to be acceptance of training with state approval under federal or state law relating to unemployment benefits.

[PL 2009, c. 271, §3 (AMD).]

6-E. Prohibition against disqualification of individuals in approved training under federal Workforce Innovation and Opportunity Act. Notwithstanding any other provision of this chapter, unless inconsistent with federal law, the acceptance of training opportunities available through the federal Workforce Innovation and Opportunity Act, 29 United States Code, Sections 3101 to 3361 is deemed to be acceptance of training with the approval of the State within the meaning of any other provision of federal or state law, relating to unemployment benefits.

[PL 2017, c. 475, Pt. A, §44 (RPR).]

7. Service with nonprofit organizations and educational institutions and state and local governments. Benefits based on service in employment defined in section 1043, subsection 11, paragraph A-1, subparagraphs (1) and (3) shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this Act; except that:

A. With respect to weeks of unemployment beginning 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 2 successive academic years or terms, or when an agreement provides instead for a similar period between 2 regular but not successive terms, during such period, 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 annual written reasonable assurance that such individual will perform services in any such capacity for any educational institution in the 2nd of such academic years or terms; [PL 1977, c. 585, §2 (AMD).]

B. With respect to weeks of unemployment beginning after September 3, 1982, in any other capacity for an educational institution, benefits shall not be paid on the basis of those services to any individual for any week which commences during a period between 2 successive academic years or terms if the individual performs those services in the first of the academic years or terms and there is annual written reasonable assurance that the individual will perform the services in the 2nd of that academic year or terms; except that if benefits are denied to any individual under this paragraph and the individual was not offered an opportunity to perform the services for the educational institution for the 2nd of those 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 paragraph; [PL 1983, c. 13, §7 (AMD).]

C. With respect to weeks of unemployment beginning after December 31, 1977, benefits shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs any services described in paragraphs A or B in the period immediately before such vacation period or holiday recess, and there is annual

written reasonable assurance that such individual will perform any such services in the period immediately following such vacation period or holiday recess. [PL 1977, c. 585, §2 (AMD).]

D. With respect to weeks of unemployment beginning after June 30, 1979, benefits shall be denied to an individual who performed services in an educational institution while in the employ of an educational service agency for any week which commences during a period described in paragraphs A, B and C if that individual performs any services described in paragraphs A or B in the first of these periods, as specified in the applicable paragraph, and there is a contract or a reasonable assurance as applicable in the appropriate paragraph, that the individual will perform these services in the 2nd of these periods, as applicable in the appropriate paragraph. For purposes of this paragraph the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purposes of providing these services to one or more educational institutions. [PL 1979, c. 515, §14 (NEW).]

[PL 1983, c. 13, §7 (AMD).]

8. No denial or reduction of benefits. Benefits shall not be denied or reduced to an individual solely because he files a claim in another state, or a contiguous country with which the United States has an agreement with respect to unemployment compensation, or because he resides in another state or contiguous country at the time he files a claim for benefits.

[PL 1971, c. 538, §27 (NEW).]

9. No denial of benefits for jury service. Benefits shall not be denied to an individual solely because he is selected to serve as a juror. Individuals, who receive actual earnings for jury service, shall be paid a partial benefit in an amount equal to his weekly benefit amount less that amount earned for jury service.

[PL 1975, c. 448 (NEW).]

10. Benefit payments to athletes. 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 2 successive sport 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 latter of such seasons or similar periods.

[PL 1977, c. 570, §22 (NEW).]

11. Benefit payments to illegal aliens. On and after January 1, 1978, benefits are not payable on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status must be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of the individual's alien status may be made except upon a preponderance of the evidence.

[PL 1991, c. 377, §14 (AMD).]

12. Participation in reemployment services. The individual who has been referred to reemployment services, pursuant to a profiling system established by the commissioner, participates in those services or similar services unless it is determined that the individual has completed those services or there is good cause for the individual's failure to participate;

[PL 2017, c. 453, §2 (AMD).]

13. Reemployment services and eligibility assessment; participation. In the case that the individual has been referred to reemployment services and eligibility assessment by the Department of Labor, the individual participates in those services, unless the department determines there is good cause for the individual's failure to participate. Failure to participate in reemployment services and eligibility assessment without good cause results in a denial of benefits until the individual participates; and

[PL 2017, c. 453, §3 (AMD).]

14. Temporary unemployment; work search. Notwithstanding any other provisions of this chapter to the contrary, any otherwise eligible individual who is temporarily laid off by an employer that has given that individual a definite recall date may not be denied benefits for any week based on the individual's failure to meet the requirements of subsection 2 or 3 for a period of 6 weeks during that temporary layoff, so long as the individual remains in contact with and able and available to work for that employer.

An individual may not receive more than 6 weeks of benefits in a benefit year pursuant to this subsection unless approved by the Department of Labor.

[PL 2017, c. 453, §4 (NEW).]

For purposes of subsections 2, 3, 12 and 13, "good cause" means the unemployed individual is ill; the presence of the unemployed individual is required due to an illness of the unemployed individual's spouse, children, parents, stepparents, brothers or sisters, or relatives who have been acting in the capacity of a parent of either the unemployed individual or the unemployed individual's spouse; the unemployed individual is in attendance at the funeral of such a relative; the unemployed individual is observing a religious holiday as required by religious conviction; the unemployed individual is performing either a military or civil duty as required by law; or other cause of a necessitous and compelling nature, including child care emergencies and transportation emergencies. If an unemployed individual has completed reemployment services and eligibility assessment with the Department of Labor within the prior 5 years, that individual is considered to have good cause for not participating in reemployment services and eligibility assessment under subsections 12 and 13. "Good cause" does not include incarceration as a result of a conviction for a felony or misdemeanor. [PL 2017, c. 453, §5 (AMD).]

SECTION HISTORY

PL 1965, c. 381, §§11,12 (AMD). PL 1965, c. 409 (AMD). PL 1967, c. 340 (AMD). PL 1967, c. 398, §3 (AMD). PL 1971, c. 538, §§23-27 (AMD). PL 1973, c. 555, §13 (AMD). PL 1975, c. 8 (AMD). PL 1975, c. 25 (AMD). PL 1975, c. 26 (AMD). PL 1975, c. 344, §§1,2 (AMD). PL 1975, c. 448 (AMD). PL 1975, c. 568, §3 (AMD). PL 1975, c. 770, §122 (AMD). PL 1977, c. 570, §§21,22 (AMD). PL 1977, c. 585, §2 (AMD). PL 1979, c. 165, §2 (AMD). PL 1979, c. 496, §1 (AMD). PL 1979, c. 515, §§13-14 (AMD). PL 1979, c. 579, §§21,22 (AMD). PL 1979, c. 651, §§22,23,47 (AMD). PL 1981, c. 220 (AMD). PL 1981, c. 548, §2 (AMD). PL 1983, c. 13, §7 (AMD). PL 1983, c. 129 (AMD). PL 1983, c. 257, §1 (AMD). PL 1983, c. 351, §16 (AMD). PL 1983, c. 510 (AMD). PL 1983, c. 816, §A22 (AMD). PL 1985, c. 348, §5 (AMD). PL 1987, c. 570, §3 (AMD). PL 1987, c. 861, §21 (AMD). PL 1989, c. 502, §§A109,A110 (AMD). PL 1991, c. 377, §14 (AMD). PL 1991, c. 870, §3 (AMD). PL 1991, c. 885, §E39 (AMD). PL 1991, c. 885, §E47 (AFF). RR 1995, c. 1, §23 (COR). PL 1995, c. 222, §1 (AMD). PL 1995, c. 665, §DD1 (AMD). PL 1995, c. 665, §DD12 (AFF). PL 1999, c. 705, §1 (AMD). PL 2003, c. 458, §1 (AMD). PL 2005, c. 454, §1 (AMD). PL 2007, c. 352, Pt. C, §1 (AMD). PL 2009, c. 271, §3 (AMD). PL 2009, c. 466, §2 (AMD). PL 2011, c. 645, §§2-5 (AMD). PL 2013, c. 314, §1 (AMD). PL 2013, c. 474, §§1, 2 (AMD). PL 2017, c. 110, §8 (AMD). PL 2017, c. 117, §§4, 5 (AMD). PL 2017, c. 453, §§1-5 (AMD). PL 2017, c. 475, Pt. A, §44 (AMD). PL 2021, c. 348, §39 (AMD). PL 2021, c. 456, §§17-21 (AMD).

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