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VOLUME 46, ISSUE 16

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**RULE PROPOSALS**

**LABOR AND WORKFORCE DEVELOPMENT  
DIVISION OF UNEMPLOYMENT INSURANCE**

*46 N.J.R. 1796(a)*

**Proposed Amendments:** *N.J.A.C. 12:17-2.1, 9.1, 9.2, 10.1, 10.3 through 10.9, and 21.2*

**Proposed Repeal:** *N.J.A.C. 12:17-10.2*

[Click here to view Interested Persons Statement](#)

**Claims Adjudication - Voluntarily Leaving Work and Misconduct**

Authorized By: Harold J. Wirths, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 43:21-7g*.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-132.

A **public hearing** on the proposed amendments and repeal will be held on the following date at the following location:

Friday, September 5, 2014  
10:00 A.M.  
New Jersey Department of Labor and Workforce Development  
John Fitch Plaza  
13th Floor Auditorium  
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by October 17, 2014, to:

David Fish, Executive Director  
Legal and Regulatory Services

Department of Labor and Workforce Development  
P.O. Box 110, 13th Floor  
Trenton, NJ 08625-0110  
Fax: (609) 292-8246  
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The agency proposal follows:

### Summary

The Department of Labor and Workforce Development (Department) is proposing amendments and a repeal within N.J.A.C. 12:17-2, 9, 10, and 21 in order to implement P.L. 2010, c. 37, which in pertinent part amends *N.J.S.A. 43:21-1* et seq., Unemployment Compensation Law, so as to (1) increase from four to eight the number of weeks that an individual must be reemployed and work in order to establish eligibility for unemployment compensation after he or she either voluntarily leaves work without good cause attributable to such work or has been discharged for gross misconduct connected with such work; (2) increase from six times to 10 times the individual's weekly benefit amount, as the total an individual must earn in order to establish eligibility for unemployment compensation after he or she either voluntarily leaves work without good cause attributable to such work or has been discharged for gross misconduct connected with such work; (3) increase from six to eight the number of weeks that an individual is disqualified from receipt of unemployment compensation when he or she has been suspended or discharged for misconduct connected with the work; (4) create a new category of misconduct known as "severe misconduct"; and (5) establish that when an individual has been suspended or discharged for severe misconduct connected with the work, he or she is disqualified for unemployment compensation for the week in which he or she has been suspended or discharged for severe misconduct connected with the work, and for each week thereafter until the individual becomes reemployed and works four weeks in employment and has earned in employment at least six times the individual's weekly benefit rate.

Amendments and repeals within N.J.A.C. 12:17-2, 9, 10, and 21 were originally proposed by the Department on November 15, 2010, in order to implement P.L. 2010, c. 37. See *42 N.J.R. 2712(a)* (November 2010 Proposal). The Department did not adopt the November 2010 Proposal. On January 7, 2013, a second notice of proposal for amendments and repeals within N.J.A.C. 12:17-2, 9, 10, and 21 was published in the New Jersey Register. See *45 N.J.R. 19(a)* (January 2013 Proposal). Within the [page=1797] January 2013 Proposal, what the Department was proposing was virtually identical to the November 2010 Proposal, except that the January 2013 Proposal contained a requirement that employer proof of misconduct must be through written documentation and the January 2013 Proposal would define "simple misconduct" in the same manner that existing *N.J.A.C. 12:17-10.2* defines "misconduct", whereas the November 2010 Proposal had sought to relocate the explanation of "misconduct" from *N.J.A.C. 12:17-10.2*, revise the explanation, and add it as a definition, "simple misconduct," for the reasons explained in the November 2010 Proposal.

The period for submission of written comments regarding the January 2013 Proposal ended on March 8, 2013. On March 21, 2013, less than two weeks after the close of the comment period for the January 2013 Proposal, the Superior Court, Appellate Division, issued its opinion in *Silver v. Board of Review*, *430 N.J. Super. 44 (App. Div. 2013)*. In that opinion, the court directly addressed the distinction between "simple misconduct" and "severe misconduct" in a manner (described in more detail below) which led the Department to conclude that it should revise the approach to regulatory implementation of P.L. 2010, c. 37, which had been suggested in its January 2013 Proposal; specifically, the Department determined that it would be necessary to materially change the proposed regulatory definitions for the terms "simple misconduct" and "severe misconduct." Consequently, the Department did not adopt the January 2013 Proposal.

This notice of proposal, like both the November 2010 Proposal and the January 2013 Proposal, would (1) amend both *N.J.A.C. 12:17-9.1* and *9.2* so as to increase from four to eight the number of weeks that an individual must be reemployed and work, and so as to increase from six times to 10 times the individual's weekly benefit amount the total an individual must earn, in order for that individual to establish eligibility for unemployment compensation after he or she voluntarily leaves work without good cause shown attributable to such work; (2) amend *N.J.A.C. 12:17-10.1* so as to increase from six to eight the number of weeks that an individual is disqualified from receipt of unemployment compensation when he or she has been suspended or discharged for simple misconduct connected with the work; (3) amend *N.J.A.C. 12:17-10.1* so as to increase from four to eight the number of weeks that an individual must be reemployed and work, and so as to increase from six times to 10 times the individual's weekly benefit amount the total an individual must earn, in order for that individual to establish eligibility for unemployment compensation after he or she has been discharged for gross misconduct connected with such work; (4) relocate all misconduct-related definitions to *N.J.A.C.*

12:17-2.1, which contains definitions for words and terms used throughout the chapter; (5) within the heading for Subchapter 10 and the heading for *N.J.A.C. 12:17-10.1* and within the body of *N.J.A.C. 12:17-21.2*, substitute the term "misconduct" for the phrase "misconduct or gross misconduct;" and (6) relocate existing *N.J.A.C. 12:17-10.2(b)* to *N.J.A.C. 12:17-10.1(f)*, where the requirement pertaining to burden of proof in misconduct cases is better situated.

This notice of proposal, like both the November 2010 Proposal and the January 2013 Proposal, also incorporates the statutory creation of a new category of misconduct known as "severe misconduct" and contains the statutory requirement that when an individual has been suspended or discharged for severe misconduct connected with the work, he or she is disqualified for unemployment compensation for the week in which he or she has been suspended or discharged for severe misconduct connected with the work, and for each week thereafter until the individual becomes reemployed and works four weeks in employment and has earned in employment at least six times the individual's weekly benefit rate.

This notice of proposal contains definitions for the terms "malicious," "simple misconduct," and "severe misconduct." In addition, an amendment to the definition of "connected with the work" is proposed to replace "after working hours" with "outside of working hours." The approach to defining these terms taken by the Department in this notice of proposal is guided in large part by the court's ruling in *Silver, supra*. That is, in *Silver, supra*, the court concluded that it would be "absurd and clearly contrary to the legislative intent, as expressly set forth in the Governor's Conditional Veto Message to S1813, [P.]L. 2010, c. 37," for an act to constitute severe misconduct simply by virtue of its inclusion within the list of examples of severe misconduct found at *N.J.S.A. 43:21-5* (as amended by P.L. 2010, c. 37), if that act would not also meet the standard for simple misconduct (currently "misconduct") set forth within the Department rules. See *Silver, supra*, at 55. The court explained, "it is obvious that the Governor and Legislature intended to create severe misconduct as a gap-filler between simple misconduct and gross misconduct," adding, "[i]t would make no sense to allow for conduct with a lower level of culpability (such as mere inadvertence or negligence) to qualify as severe misconduct and carry with it a harsher sanction than simple misconduct." *Ibid*.

The *Silver* court did not opine as to what, in the absence of a statutory definition for either "misconduct" or "simple misconduct" (or "severe misconduct," for that matter), should be the definition of "simple misconduct," except to state that because existing *N.J.A.C. 12:17-10.2(a)* is the agency's own rule, "it constitutes the controlling authority for disposition of claims based on misconduct." *Id.* at 53. In this regard, the court observed that the test for "simple misconduct" (currently "misconduct") contained within the Department's existing rule is "more stringent than *the Am. Jur.* passage quoted in [the seminal case of] *Beaunit Mills [v. Division of Emp. Sec., 43 N.J. Super 172 (App. Div. 1956)]*." *Id.* This circumstance (that is, the now acknowledged material difference between the existing regulatory definition of "misconduct" and the case law definition of "misconduct") is precisely what had originally prompted the Department to propose a new definition for the term "simple misconduct" (currently "misconduct"), so as to ensure consistency between the regulatory definition of "misconduct" (proposed "simple misconduct") and the definition for "misconduct" (proposed "simple misconduct") announced by the court in *Beaunit Mills*. See *41 N.J.R. 3781(a)*, published on October 5, 2009 (the October 2009 Proposal). That is, as explained in the October 2009 Proposal, it had never been the Department's intent to modify through rulemaking the definition of "misconduct" (proposed "simple misconduct") contained within the *Beaunit Mills* opinion, so as to require that an act be both deliberate and malicious in order to be considered "misconduct" (proposed "simple misconduct"). Rather, it had been the Department's intent to paraphrase in rule the standard utilized by the court in *Beaunit Mills* and its progeny, which, as observed by the court in *Silver*, draws the critical distinction for purposes of determining whether an act constitutes "misconduct" between intentional and deliberate conduct on the one hand and negligent or inadvertent conduct on the other (with the caveat that "negligence in such a degree or recurrence as to manifest culpability, wrongful intent, or evil design" would, indeed, constitute misconduct). Thus, with the Department's realization in 2009 that the regulatory definition could arguably be read to require for an act to be considered "misconduct" (proposed as "simple misconduct" in this notice of proposal), that it be not just intentional and deliberate, but also malicious, a result never intended by the Department, it proposed, during a prior gubernatorial administration, and well before passage of P.L. 2010, c. 37, that *N.J.A.C. 12:17-10.2* be amended, so that the regulatory definition of "misconduct" (proposed "simple misconduct") would be aligned with the case law definition, thereby eliminating any possible confusion.

With the *Silver* court's observation, in a published opinion, that the rule and case law are, in fact, inconsistent, and that the regulatory definition requires that conduct be "intentional, deliberate, and malicious" (*Silver, supra* at 57) in order to be considered "misconduct" (proposed "simple misconduct"), the need is more urgent now than ever for adoption of the proposed definition for the term "simple misconduct" contained in this notice of proposal.

Furthermore, with the advent of "severe misconduct," which P.L. 2010, c. 37 explains includes a series of enumerated types of conduct as well as "where the behavior [of the claimant] is malicious *and* deliberate ..." (emphasis added), it is imperative that the definition of "simple misconduct" not also require that an act be malicious and deliberate, so as to clearly distinguish simple from severe misconduct. In the absence of this important distinction between the definitions of simple and severe misconduct, it would be extremely difficult if not impossible, to determine whether a particular claimant's conduct, if both deliberate and malicious, is either simple or severe misconduct.

As to the definition of "severe misconduct," in accord with the court's opinion in *Silver* and consistent with the approach to defining "simple misconduct" outlined above, the Department is proposing to define the [page=1798] term to mean an act which (1) constitutes "simple misconduct," as that term is defined in *N.J.A.C. 12:17-2.1*, and (2) is both deliberate and malicious. The proposed definition for the term "severe misconduct" would also state that such acts of "severe misconduct" shall include, but not necessarily be limited to, the examples listed in P.L. 2010, c. 37, "so long as each such act also (1) constitutes "simple misconduct," as that term is defined in [*N.J.A.C. 12:17-2.1*], and (2) is both deliberate and malicious."

Regarding existing *N.J.A.C. 12:17-10.3* through *10.9*, whereas both the November 2010 Proposal and the January 2013 Proposal had sought to repeal those sections on the basis that the list of examples of "severe misconduct" within P.L. 2010, c. 37 had made them obsolete, the holding in *Silver*, makes the sections at issue relevant again. That is, the holding in *Silver* requires a two-part analysis of a claimant's conduct to determine whether it constitutes "severe misconduct," the first part being to determine whether it meets the regulatory criteria for "simple misconduct." Thus, since regardless of whether the offending act falls within one of the list of examples of "severe misconduct" contained within P.L. 2010, c. 37, a full analysis of whether the act constitutes "simple misconduct" must precede any finding that it constitutes "severe misconduct," the various scenario-specific rules contained within recodified *N.J.A.C. 12:17-10.2* through *10.8* remain applicable. Consequently, this notice of proposal does not seek to repeal *N.J.A.C. 12:17-10.3* through *10.9*, but rather, amends those sections, so as to replace the term "misconduct" everywhere that it appears with the term "simple misconduct." In addition, recodified *N.J.A.C. 12:17-10.4* replaces "willful misconduct" with "simple misconduct."

Finally, this notice of proposal, like the January 2013 Proposal, contains a requirement that employer proof of misconduct must be through written documentation. As explained in the January 2013 Proposal, written comments were received in response to the November 2010 Proposal, which had not included the written documentation requirement. Those comments made reference to the Governor's Conditional Veto Statement to Senate Bill No. 1813, in which the Governor had indicated that he would "advise the Department of Labor & Workforce Development ...to propose appropriate regulations to require that an employer provide written documentation to show that the employee's actions constitute either misconduct, severe misconduct, or gross misconduct." Although the above-cited excerpt from the Governor's Conditional Veto Statement has neither the force, nor the effect of law, and is, therefore, not binding, the Department proposes, at the instruction of the Governor's Office, as it had in the January 2013 Proposal, amendments to include the written documentation requirement.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to *N.J.A.C. 1:30-3.3(a)5*.

### **Social Impact**

The vast majority of the proposed amendments and repeal either mirror P.L. 2010, c. 37 or are necessitated by the new law. Therefore, whatever negative social impact might be felt by claimants would derive in the first instance from the law, P.L. 2010, c. 37, not the proposed amendments and repeal. As to the remainder of the amendments and repeal, it is the Department's belief that they would have a positive social impact in that they would minimize any possible confusion as to when and how a claimant for unemployment compensation is disqualified for benefits, pursuant to the Unemployment Compensation Law, *N.J.S.A. 43:21-1* et seq., and *N.J.A.C. 12:17-10*, when the individual has been suspended or discharged for misconduct connected with the work, which now includes simple misconduct, severe misconduct, and gross misconduct connected with the work.

### **Economic Impact**

As indicated in the Social Impact above, the vast majority of the proposed amendments and repeal either mirror P.L. 2010, c. 37 or are necessitated by the new law. Therefore, whatever negative economic impact might be felt by claimants would derive in the first instance from the law, P.L. 2010, c. 37, not the proposed amendments and repeal. As

to the remainder of the amendments and repeal, it is the Department's belief that they would have a positive economic impact in that they would minimize any possible confusion as to when and how a claimant for unemployment compensation is disqualified for benefits, pursuant to the Unemployment Compensation Law, *N.J.S.A. 43:21-1* et seq., and *N.J.A.C. 12:17-10*, when the individual has been suspended or discharged for misconduct connected with the work, which now includes simple misconduct, severe misconduct, and gross misconduct connected with the work. It is the Department's hope that minimizing confusion as to these issues will avoid costs for claimants and employers of unnecessary litigation, which might otherwise result.

### **Federal Standards Statement**

The proposed amendments and repeal do not exceed standards or requirements imposed by Federal law. Specifically, the proposed amendments and repeal are not inconsistent with the Federal Unemployment Tax Act, *26 U.S.C. §§ 3301* et seq. Consequently, no Federal standards analysis is required.

### **Jobs Impact**

The proposed amendments and repeal would have no impact on either the generation or loss of jobs.

### **Agriculture Industry Impact**

The proposed amendments and repeal would have no impact on the agriculture industry.

### **Regulatory Flexibility Analysis**

The proposed amendments and repeal would impose no reporting, recordkeeping, or compliance requirements on small businesses, as that term is defined by the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. Outside the realm of reporting, recordkeeping, or compliance, the existing rules indicate that the burden of proof is on the employer to show that the employee's actions constitute misconduct. As explained in the Summary above, the proposed amendments would add that in order to meet this burden of proof, the employer must show "through written documentation" that the employee's actions constitute misconduct. As explained in the Summary above, the proposed amendments would add that in order to meet this burden of proof, the employer must show "through written documentation" that the employee's actions constitute misconduct. As is also explained in the Summary above, the "written documentation" requirement is being added in accordance with the Governor's Conditional Veto Message to S1813, P.L. 2010, c. 37, in which the Governor indicated that he would "advise the Department of Labor and Workforce Development to ... propose appropriate regulations to require that an employer provide written documentation to show that the employee's actions constitute either misconduct, severe misconduct or gross misconduct." In every other respect, the purpose and effect of the proposed amendments and repeal is described in detail in the Summary above. Employers should not require outside professional services to comply with the proposed amendments and repeal.

### **Housing Affordability Impact Analysis**

The proposed amendments and repeal would not have an impact on affordable housing in New Jersey or evoke a change in the average costs associated with housing. The basis for this finding is that the proposed amendments and repeal pertain to unemployment compensation, and have nothing whatsoever to do with housing.

### **Smart Growth Development Impact Analysis**

The proposed amendments and repeal would not impact smart growth or evoke a change in housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed amendments and repeal pertain to unemployment compensation, and have nothing whatsoever to do with housing production.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 2. DEFINITIONS

### 12:17-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

[page=1799] **"Connected with the work"** means not only misconduct that occurs in the course of employment during working hours, but includes any conduct that occurs outside of working hours or off the employer's premises where there is substantial evidence that the conduct adversely impacts the employer or the individual's ability to perform the duties of his or her job.

...

**"Gross misconduct"** means an act punishable as a crime of the first, second, third, or fourth degree under the New Jersey Code of Criminal Justice, *N.J.S.A. 2C:1-1* et seq.

...

**"Malicious"** means when an act is done with the intent to cause injury or harm to another or others or when an act is substantially certain to cause injury or harm to another or others.

...

**"Misconduct"** means simple misconduct, severe misconduct, or gross misconduct.

...

**"Severe misconduct"** means an act which (1) constitutes "simple misconduct," as that term is defined in this section; (2) is both deliberate and malicious; and (3) is not "gross misconduct."

1. Pursuant to *N.J.S.A. 43:21-5*, as amended by P.L. 2010, c. 37, such acts of "severe misconduct" shall include, but not necessarily be limited to, the following: repeated violations of an employer's rule or policy, repeated lateness or absences after a written warning by an employer, falsification of records, physical assault or threats that do not constitute "gross misconduct," misuse of benefits, misuse of sick time, abuse of leave, theft of company property, excessive use of intoxicants or drugs on work premises, or theft of time; except that in order for any such act to constitute "severe misconduct," it must also (1) constitute "simple misconduct"; and (2) be both deliberate and malicious.

**"Simple misconduct"** means an act which is neither "severe misconduct" nor "gross misconduct" and which is an act of wanton or willful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of standards of behavior that the employer has the right to expect of his or her employee, or negligence in such degree or recurrence as to manifest culpability, wrongful intent, or evil design, or show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer.

...

## SUBCHAPTER 9. CLAIM ADJUDICATION--VOLUNTARILY LEAVING WORK

### 12:17-9.1 Disqualification for voluntarily leaving--general principals

(a) An individual shall be disqualified for benefits for the week in which he or she has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed and works [four] **eight** weeks in employment, which may include employment for the Federal government, and has earned in employment at least [six] **10** times the individual's weekly benefit rate, as determined in each case. See *N.J.S.A. 43:21-5(a)*.

(b)-(e) (No change.)

12:17-9.2 Voluntarily leaving secondary part-time employment

(a) A worker, who is employed by two or more employers, one of which is full-time work and the other(s) part-time work, who is separated from the full-time employment and becomes eligible for benefits, and subsequently voluntarily leaves the part-time employment, shall be subject to a partial disqualification for voluntarily leaving the part-time employment. An individual may avoid partial disqualification if he or she can establish good cause attributable to such work as defined in *N.J.A.C. 12:17-9.1(b)*. The partial disqualification amount is determined by dividing the total part-time earnings during the eight-week period immediately preceding the week in which the separation occurred by the total number of weeks the individual worked in that part-time employment during the eight-week period. The partial earnings amount is then deducted from the partial weekly benefit amount. The partial disqualification shall remain in effect until the individual becomes reemployed and works [four] **eight** weeks in employment, which may include employment for the Federal government, and he or she has earned in employment [six] **10** times the individual's weekly benefit rate, as determined in each case.

1.-2. (No change.)

(b) (No change.)

SUBCHAPTER 10. CLAIMS ADJUDICATION--MISCONDUCT [AND GROSS MISCONDUCT] CONNECTED WITH **THE** WORK

12:17-10.1 Disqualification for misconduct [and gross misconduct] connected with **the** work--general principles

(a) An individual shall be disqualified for benefits for the week in which the individual has been suspended or discharged for **simple** misconduct connected with the work, and for the [five] **seven** weeks [which] **that** immediately follow that week. (See *N.J.S.A. 43:21-5(b)*[.])

**(b) An individual shall be disqualified for benefits for the week in which the individual has been suspended or discharged for severe misconduct connected with the work, and for each week thereafter until the individual becomes reemployed and works four weeks in employment, which may include employment for the Federal government, and has earned in employment at least six times the individual's weekly benefit rate, as determined in each case.**

[(b)] (c) (No change in text.)

[(c)] **(d)** If the individual's discharge was for gross misconduct connected with the work because he or she committed an act punishable as a crime of the first, second, third, or fourth degree under the [""]New Jersey Code of Criminal Justice,[""] *N.J.S.A. 2C:1-1* et seq., the individual shall be disqualified for benefits for the week in which he or she was discharged and for each week thereafter until the individual becomes reemployed and works [four] **eight** weeks in employment and has earned at least [six] **10** times the individual's weekly benefit rate. The individual will have no benefit rights based upon wages from that employer for services rendered prior to the day upon which he or she was discharged.

[(d)] (e) (No change in text.)

**(f) To sustain disqualification under this section, the burden of proof is on the employer to show through written documentation that the employee's actions constitute misconduct. However, in the case of gross misconduct, the following apply:**

**1. Where an employer provides sufficient evidence to establish that a claimant was discharged for gross misconduct connected with the work, prosecution or conviction shall not be required to sustain that the claimant has engaged in gross misconduct.**

**2. If an individual has been convicted of a crime of the first, second, third, or fourth degree under the New Jersey Code of Criminal Justice, *N.J.S.A. 2C:1-1 et seq.*, in a court of competent jurisdiction, such conviction shall be conclusive as to a finding of gross misconduct.**

[12:17-10.2 Misconduct defined

(a) For an act to constitute misconduct, it must be improper, intentional, connected with one's work, malicious, and within the individual's control, and is either a deliberate violation of the employer's rules or a disregard of standards of behavior which the employer has the right to expect of an employee.

(b) To sustain disqualification under this section, the burden of proof is on the employer to show that the employee's actions constitute misconduct. However, in the case of gross misconduct, the following apply:

1. Where an employer provides sufficient evidence to establish that a claimant was discharged for gross misconduct connected with the work, prosecution or conviction shall not be required to sustain that the claimant has engaged in gross misconduct.

2. If an individual has been convicted of a crime of the first, second, third or fourth degree under the New Jersey Code of Criminal Justice, *N.J.S.A. 2C:1-1 et seq.*, in a court of competent jurisdiction, such conviction shall be conclusive as to a finding of gross misconduct.

(c) "Connected with the work" means not only misconduct that occurs in the course of employment during working hours, but includes any conduct which occurs after working hours or off the employer's premises [page=1800] where there is substantial evidence that the conduct adversely impacts the employer or the individual's ability to perform the duties of his or her job.]

12:17-[10.3]10.2 Discharge or suspension for unauthorized absence

(a) An individual shall be disqualified for benefits for **simple** misconduct connected with the work, if he or she did not have good cause for being absent from work, or failed without justification to take steps necessary to notify the employer of the absence and the reason therefor.

(b)-(c) (No change.)

12:17-[10.4]10.3 Discharge or suspension for tardiness

(a) Tardiness shall constitute **simple** misconduct if it was:

1.-2. (No change.)

12:17-[10.5]10.4 Discharge or suspension for falsification of application or other records

An individual shall be considered to have committed an act of [willful] **simple** misconduct when it is established that he or she falsified an employment application or other records required by the employer, or omitted information which created a material misrepresentation of his or her qualifications or suitability for the job.

12:17-[10.6]10.5 Discharge or suspension for insubordination or violation of an employer's rule

(a) An individual shall be considered to have been discharged for an act of **simple** misconduct where it is established that he or she has committed an act of "**simple** misconduct" [as defined in *N.J.A.C. 12:17-10.2*] and met one of the following:

1.-3. (No change.)

12:17-[10.7]10.6 Discharge or suspension for unsatisfactory work performance



An individual's discharge for failure to meet the employer's standard(s) relating to quantity or quality of work shall not be considered **simple** misconduct, unless it is established that he or she deliberately performed below the standard(s), in a manner that is consistent with [N.J.A.C. 12:17-10.2,] "**simple misconduct**," and that the standard(s) was reasonable.

12:17-[10.8]10.7 Discharge or suspension for failure to observe safety standards

Where an individual has violated a reasonable safety standard imposed by the employer, such violation shall constitute an act of **simple** misconduct if the violation is consistent with the definition of "**simple** misconduct." [as defined in N.J.A.C. 12:17-10.2.]

12:17-[10.9]10.8 Failing or refusing to take an employer drug test

(a) Where a drug-free workplace and/or drug testing is a prerequisite of employment, an employee who tests positive for illegal drugs on a bona fide drug test of the employer or refuses to provide a test sample for the employer violates a condition of employment. If separated from employment for this reason, the employee shall be disqualified for benefits for **simple** misconduct connected with such work.

(b) (No change.)

SUBCHAPTER 21. RELIEF FROM BENEFIT CHARGES

12:17-21.2 Reasons for separation

(a) A base year employer may obtain relief from the charges for benefits paid to a former employee if the claimant was separated from his or her work with such employer due to any of the following reasons:

1. (No change.)

2. The claimant was discharged for willful misconduct [or gross misconduct] connected with the work;

3.-6. (No change.)