

**To: New Jersey Law Revision Commission**  
**From: Chris Mrakovic**  
**Re: Unemployment Benefits when an Offer of Employment is Rescinded under N.J.S. 43:21-5(a) (*McClain v. Bd. of Review, Dep't of Labor*, 237 N.J. 445 (2019))**  
**Date: October 05, 2020**

## MEMORANDUM

### Executive Summary

The grounds upon which an employee is disqualified from receiving unemployment benefits are governed by the Unemployment Compensation Law, specifically N.J.S. 43:21-5.<sup>1</sup>

In 2015, subsection a. of the statute was amended to specify that disqualification does not extend to an employee who voluntarily leaves employment and begins new employment within seven days. The statute is silent regarding whether disqualification extends to an employee who was scheduled to start new employment but could not because the offer of new employment was rescinded.

Although N.J.S. 43:21-5(a) has been analyzed in several recent decisions, this question was not answered until the New Jersey Supreme Court examined this situation in *McClain v. Bd. of Review, Dep't of Labor*.<sup>2</sup>

### Statute Considered

N.J.S. 43:21-5(a) provides, in pertinent part:

This subsection shall not apply to an individual who voluntarily leaves work with one employer to accept from another employer employment which commences **not more than seven days** after the individual leaves employment with the first employer, if the employment with the second employer has weekly hours or pay not less than the hours or pay of the employment of the first employer, except that if the individual gives notice to the first employer that the individual will leave employment on a specified date and the first employer terminates the individual before that date, the seven-day period will commence from the specified date.<sup>3</sup>

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<sup>1</sup> N.J.S. 43:21-1.

<sup>2</sup> *McClain v. Bd. of Review, Dep't of Labor*, 237 N.J. 445 (2019). See e.g. *Febles v. Bd. of Review, Dep't of Labor*, No. A-3230-16T2, 2019 WL 990864 (N.J. Super. Ct. App. Div. Feb. 28, 2019) (holding that *seven days* means days of the week, and not business days); *Ardan v. Bd. of Review*, 231 N.J. 589 (2018) (holding that the 2015 amendment does not apply retroactively).

<sup>3</sup> N.J.S. 43:21-5(a) (emphasis added).

## Background

*McClain v. Bd. of Review, Dep't of Labor* is a consolidated appeal involving two plaintiffs, each of whom voluntarily left their employment upon receipt of a better job offer, only to have the job offer rescinded before their scheduled start date.<sup>4</sup> McClain, a preschool teacher, resigned her position upon receipt of a new offer to begin seven days later, which was then rescinded the following day.<sup>5</sup> Blake, a cook, also received an offer to begin a new job within seven days which was rescinded two days before her scheduled start date.<sup>6</sup>

After their offers were rescinded, the plaintiffs applied for unemployment benefits.<sup>7</sup> The Deputy Director of Unemployment Insurance denied both claims, relying on the wording of N.J.S. 43:21-5(a) to find that the plaintiffs were not entitled to unemployment benefits because they did not commence employment within seven days of leaving their prior employment.<sup>8</sup> The administrative Appeals Tribunal and Board of Review (“Board”) affirmed.<sup>9</sup>

On appeal before two separate appellate panels, the plaintiffs’ fortunes diverged. In McClain’s case, the Court reversed the denial of benefits, holding that the plain language of the 2015 amendment indicates that the disqualification exception applies when new employment is scheduled to commence within seven days but does not.<sup>10</sup> The Court considered the amendment’s omission of an express condition that new employment actually begin within seven days, reading “commence” to include acceptance of employment.<sup>11</sup> Because the statute prior to amendment disqualified employees who voluntarily left employment, the court viewed the remedial purpose of the amendment as supporting this interpretation.<sup>12</sup>

In Blake’s case, the court affirmed the denial, agreeing with the requirement that an employee begin new employment within seven days.<sup>13</sup> This court cited the legislative history, noting that a Senate Labor Committee report indicated that the amendment was intended to help employees who voluntarily leave their employment only to be laid off from their new employment after commencing work.<sup>14</sup> Both claims were consolidated before the New Jersey Supreme Court.

## Analysis

The Board argued before the New Jersey Supreme Court that the plain language of the statute required the employees to begin work within seven days in order for the disqualification

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<sup>4</sup> *McClain*, 237 N.J. at 453.

<sup>5</sup> *Id.* at 452.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 453.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *McClain v. Bd. of Review, Dep't of Labor*, 451 N.J. Super. 461, 469-70 (App. Div. 2017), *aff'd*, 237 N.J. 447 (2019).

<sup>12</sup> *McClain*, 237 N.J. at 454.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 455.

exception to apply.<sup>15</sup> The plaintiffs argued that the acceptance of an offer of employment set to begin within seven days made them eligible for the protection set forth in the statute.<sup>16</sup>

The Court found both the statutory language and legislative history ambiguous.<sup>17</sup> Nevertheless, the Court noted that because the unemployment law is social legislation designed to provide relief to employees, it should be liberally construed for that purpose.<sup>18</sup> Therefore, the Court held that each plaintiff was entitled to unemployment benefits because “(1) they qualified for UI benefits at their former employment at the time of their departure, (2) they were scheduled to commence their new jobs within seven days of leaving their former employment, and (3) their new job offers were rescinded through no fault of their own before the start date.”<sup>19</sup>

### **Pending Legislation**

There are currently seven bills pending regarding N.J.S. 43:21-5.<sup>20</sup> None of them seeks to address the issue presented in *McClain v. Bd. of Review, Dep’t. of Labor*.

### **Conclusion**

Staff seeks authorization to conduct additional research and outreach to determine whether or not it would be useful to modify the statutory language of N.J.S. 43:21-5(a) to exempt from disqualification employees who leave their current job upon receipt of an offer of employment with a new employer, scheduled to begin within seven days, which is subsequently rescinded by the new employer through no fault of the employee.

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<sup>15</sup> *Id.* at 458.

<sup>16</sup> *Id.* at 459.

<sup>17</sup> *Id.* at 461.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 462.

<sup>20</sup> A4153, 219<sup>th</sup> Leg., 1<sup>st</sup> Ann. Sess. (N.J. 2020) (enhances certain worker benefits and protections, including in public emergencies); S622, 219<sup>th</sup> Leg., 1<sup>st</sup> Ann. Sess. (N.J. 2020) (identical to A4153); A3406, 219<sup>th</sup> Leg., 1<sup>st</sup> Ann. Sess. (N.J. 2020) (permits certain local governments to recruit residents to perform services in return for property tax credits); A2548, 219<sup>th</sup> Leg., 1<sup>st</sup> Ann. Sess. (N.J. 2020) (creates New Jersey Fair Workweek Act); S921, 219<sup>th</sup> Leg., 1<sup>st</sup> Ann. Sess. (N.J. 2020) (identical to A2548); S218, 219<sup>th</sup> Leg., 1<sup>st</sup> Ann. Sess. (N.J. 2020) (establishes standards regarding the disqualification of claimants for unemployment compensation for misconduct); and, S388, 219<sup>th</sup> Leg., 1<sup>st</sup> Ann. Sess. (N.J. 2020) (establishes “Monica’s Law” concerning domestic violence risk assessment pilot program).