

Looking Out For Your Legal Rights®

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Knowing whether or not your unemployment case involves a “suitability of new work” issue is important because it could prevent you from being improperly disqualified from benefits. *Page 1*

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español la encontrará
al reverso.

“Suitability of New Work” in Unemployment Claims

Why is the “suitability of new work” an important issue in unemployment claims?

KNOWING whether or not your unemployment case involves a “suitability of new work” issue is important because it could prevent you from being improperly disqualified from benefits. In analyzing cases where

“Voluntary quit” cases can result in complete disqualifications from benefits.

someone voluntarily leaves their job, the New Jersey Department of Labor often misses the issue of “suitability of new work” and, instead, assesses only the issue of “voluntarily leaving work without good cause attributable to the work.” “Voluntary quit” cases can result in complete disqualifications from benefits, whereas “suitability of new work” cases carry—at worst—only a four-week disqualification from benefits. So if your case is analyzed as a “voluntary quit” case when it should be analyzed as a “suitability of new work” case, you may be completely disqualified from benefits when you really should not be disqualified at all or, at worst, only for four weeks. For this reason, it is important to know whether your case is a “suitability of new work” case.

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How do I know whether my case involves “suitability of new work”?

Suitability of new work issues can arise when:

- An offer of work is made to an unemployed person by an employer with whom he or she has never worked;
- An offer of reemployment is made by a former employer, following an indefinite layoff with no recall date; or
- An offer of work is made by a present employer with different duties, terms, or conditions than those agreed to in his or her existing contract of hire.

If your employer significantly changes the terms of your employment (for example, your hours, shift, job duties, job location, salary, benefits, work environ-

ment, or health and safety conditions) from the initial terms of hire, that is considered an offer of “new work.” If it is impractical for you to accept the terms of the new offer of work, then you may be able to leave the job and still collect unemployment benefits. If the terms of the new offer of work were suitable and you left the job anyway, then you will be disqualified for four weeks.

How will the Department of Labor determine whether an offer of work was suitable?

In determining whether an offer of new work was suitable, the New Jersey

Department of Labor will consider the claimant’s individual circumstances. Common considerations include the claimant’s child care obligations, access to transportation to and from work, household dynam-



Demonstrating “good cause” for voluntarily leaving work may be difficult.

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ics, physical limitations, job experience, and religious affiliation/moral convictions. If the terms of the new offer of work would place a substantial burden on the claimant, the new offer of work would be unsuitable.

How are “suitability of new work” cases different from “voluntary quit” cases?

In a “voluntary quit” case, you must show that you left work “with good cause attributable to the work” to access unemployment benefits. Demonstrating “good cause” for voluntarily leaving work may be difficult. You must prove that the working conditions were so bad, harmful, or unhealthy that any reasonable person would leave the job. Personal reasons for leaving work (caring for a sick relative, child care obligations, transportation problems) do not constitute “good cause” and will result in complete disqualifications from benefits.

In cases involving offers of new work, on the other hand, personal reasons for not accepting the offer of new work *are* taken into account. You might not face any disqualification from benefits even if you turn down a new offer of work because of personal circumstances. It is possible that you could win your case with a suitability of work argument but would lose the exact same case with a voluntary quit argument.

Here’s an example of how this works: Bill works as a cashier in a fast food establishment. He is a single father, and when he is at work, his mother watches his children. His mother does not have a valid driver’s license and cannot pick up his children from school. Bill

must pick up his children and bring them home before he goes to work.

Bill’s employer says to him “we no longer need you at this location, but we want you to work in a different franchise 30 minutes away.” Although it’s not that far away and Bill owns his own car, Bill cannot go to this new location because he would be unable to pick up his children from school. He cannot afford to hire someone to pick them up and there is no bus for them to take home. Bill rejects the offer and is now jobless.

Bill then applies for unemployment and explains, “I couldn’t go to the new restaurant location because I had to pick up my kids from school.” The claims examiner disqualifies him from benefits because he did not have “good cause” for voluntarily leaving the job.

In this situation, if Bill argues that the new location was a significant change to the terms of his employment, and that it was unsuitable to him because he could no longer pick up his children from



In cases involving offers of new work, personal reasons for not accepting the offer of new work *are* taken into account.

If you believe your case involves a suitability of new work issue, you should ask the claims examiner (in your fact-finding interview) to analyze that issue.

school, then the case becomes a “suitability of new work” matter, and Bill’s personal circumstances must be taken into account. The question is no longer “Does picking up your children constitute good cause?” Instead, the question becomes, “Was the new offer of employment suitable for Bill?”

How can I ensure that the NJDOL will analyze my case as a “suitability of new work” case?

The Department of Labor often misses suitability of new work issues and assesses cases instead as voluntary quit matters. If you believe your case involves a suitability of new work issue, you should ask the claims examiner (in your fact-finding interview) to analyze that is-

sue. If the examiner does not analyze the issue, you must bring up the issue on appeal.

If the issue of “suitability of new work” (also referred to as “refusal of new work”) is not listed on your Appeal Tribunal hearing notice, write to the appeals examiner before the hearing and ask that the issue be added to the hearing notice. If you are not able to do that, ask the appeals examiner to assess the issue as soon as the hearing begins. If the Appeal Tribunal does not properly assess the issue, you may address it in your written appeal to the Board of Review. □

By Ashley Nash, Legal Services of New Jersey Legal Intern, under the supervision of Sarah Hymowitz, LSNJ Chief Counsel, Employment

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Know Your Welfare Rights: Sanctions

HAVE YOUR welfare benefits been reduced or stopped because you did not do what the welfare office told you to do? *Don't give up!*

If the welfare office believes that you did not participate in a required activity, you will be sanctioned. This means that your cash assistance or food stamps will be reduced, or maybe stopped. You could get sanctioned for not cooperating with child support requirements, or for not complying with the welfare work program. Each time you are sanctioned, the penalty is greater than the time before, and the length of time that you cannot receive benefits increases.

What is a work activity?

In order to get cash assistance or food stamps, most people must participate in a work activity. This means that a person must work, attend job training, or attend an assigned “work activity.” The work activity could include searching for work, attending meetings or classes, or working at an assigned job.

What if I can't do the work activity that I was told to do?

Talk with your caseworker and explain that you have a problem. If the problem can't be resolved, you should ask for a fair hearing to challenge the welfare office's decision.

Some people do not have to participate in the work program because of a medical reason or because they are taking care of a family member who is disabled. You should ask your caseworker for details about who is exempt from the work activity to see if you qualify.

If you have a good reason why you can't participate in an activity, you should not be sanctioned. Good reasons include:


- Medical problems
- Lack of child care
- Lack of transportation
- Caring for a disabled family member
- Other important personal matters, including court appearances or meetings at a child's school.

What should I do if I get sanctioned?

If you are sanctioned and if you have a good reason for not complying with the program, you should ask for a fair hearing to challenge the sanction. If you ask for the hearing within 15 days of the date that you receive written notice of the sanction, you can ask that your benefits continue unchanged while you wait for the hearing. Even if you don't have a good reason for not doing as you were asked, you can always get benefits again if you comply with the program requirements.

Get legal help if you have a problem

If you receive public assistance, you can get free legal help by contacting your regional Legal Services office. The telephone number and address for the Legal Services office is listed on the notices that you get from the welfare office, and it is in the telephone book. You can also get legal information by calling LSNJLAWSM, Legal Services of New Jersey's statewide, toll-free legal hotline, at 1-888-LSNJ-LAW (1-888-576-5529).

You may also apply online at www.lsnjlawhotline.org. 

Know Your Welfare Rights: Appealing a Decision

IF THE WELFARE office does something that you think is wrong, *you can challenge the decision.*

If the welfare office makes a decision about your benefits that you think is wrong, you can do something about it. What the caseworker says does not have to be the last word.

What can I do to solve a problem?

- **Talk to the supervisor.** If you can't work out the problem with your caseworker, ask to speak with the supervisor. Explain why you think that they made a mistake. Sometimes the supervisor can look into the case to see if the problem can be fixed.
- **Ask for a fair hearing.** If you are not happy with the welfare office's decision, you can challenge it by asking for a fair hearing. You have the right to a fair hearing even if your caseworker tells you that it won't change the decision.
- **Get someone to help you.** You can contact your local Legal Services office for free legal assistance. The



You can ask for a fair hearing by putting your request in writing, calling the welfare office, or calling the State Fair Hearings Hotline.

name, address, and telephone number for the Legal Services office will be on the notice that you get from the welfare office. You can also call the LSNJLAWSM Hotline at 1-888-LSNJ-LAW (1-888-576-5529) to get additional information about your rights. You may also apply online at www.lsnjlawhotline.org.

How do I get a fair hearing?

You can ask for a fair hearing by doing any of the following things:

- **Put it in writing.** Even if you go to the agency office to ask for a hearing, you should still put your request in writing. Keep a copy for yourself, and get a receipt. That way, you will have proof that you asked for the hearing.
- **Call the welfare office.** Speak with the fair hearing liaison (or with the welfare director if it is a small office). Tell him or her that you want a hearing. Make sure you get the name of the person you speak with, and write it down. Ask the person to send you a letter confirming that you asked for the hearing.
- **Call the State Fair Hearings Hotline** at 1-800-792-9773.

How long do I have for a fair hearing?

- **15 days** from the date of the welfare office's written notice, **if you want to keep your benefits the same while you wait for a hearing.** Make sure that you say that you want your benefits to continue


when you ask for the hearing. (If you lose your appeal you will have to pay the extra benefits back to the welfare office, and the welfare office will take a little bit out of your future benefits each month until this is paid back.)

- **15 days for WFNJ/GA** benefits (cash benefits for households without children). You also have 15 days to ask for a state fair hearing if you have a local hearing first and if you disagree with the local hearing decision.
- **15 days for Emergency Assistance/EA** (cash assistance for housing or utilities, or shelter assistance).
- **90 days for food stamps and/or TANF benefits** (money for households with children). (But you must ask for the hearing within **15 days if you want to keep your benefits the same while you wait for a hearing.**)

What are my rights when I ask for a fair hearing:

- You have the right to **look at your case file** before the hearing. The welfare office must show you everything that they will show the judge at the hearing. You can look at the file before the day of the hearing, and you can look at the file on the day of the hearing.
- You have the right to **bring someone with you to the hearing to help**

you explain your case. You may bring a lawyer. You may also bring a friend, relative, or someone else that you want to help you tell the judge why you are challenging the welfare office's decision.

- You have the right to **an interpreter** at the hearing. Contact the welfare office's fair hearing liaison or the local welfare director and tell them you need an interpreter.
- You have the right to **transportation assistance** if you need help to get to the hearing. Contact the fair hearing liaison or the local welfare director and tell them you need transportation assistance. 

If you have questions about fair hearings, here are places you may call for answers

- Call your local Legal Services office. The name, address, and telephone number will be on the notice that you get from the welfare office. You can also find the number in the telephone book.
- Call LSNJLAWSM, Legal Services of New Jersey's statewide, toll-free legal hotline, at 1-888-LSNJ-LAW (1-888-576-5529).
- Call the Division of Family Development Fair Hearing Information Hotline at 1-800-792-9773.

Cuáles Son Sus Derechos Legales

Junio 2016

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Cuando usted solicita los subsidios del desempleo, una de las cosas que el Estado tiene en cuenta es su disposición para trabajar. Se evalúan las circunstancias específicas de cada caso para determinar su disponibilidad laboral.

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Flip issue over for the
English edition of
*Looking Out for Your
Legal Rights.*

“La conveniencia del nuevo empleo” en las solicitudes del seguro por desempleo

CUANDO USTED solicita los subsidios del desempleo, una de las cosas que el Estado tiene en cuenta es su disposición para trabajar. Se evalúan las circunstancias específicas de cada caso para determinar su disponibilidad laboral. Dado el caso que usted renunciara voluntariamente recibiría una valoración que difiere a la que usualmente se hace en el supuesto que usted no acepte la oferta de su actual empleador. Esta distinción puede ser la

continúa en la página 2

El boletín de educación jurídica para los habitantes de Nueva Jersey



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diferencia entre una aprobación y una denegación de su caso.

¿Cómo analiza el Departamento del Trabajo un caso cuando el solicitante abandona el empleo?

El Departamento del Trabajo, en lo adelante lo identificaremos por las siglas conocidas en inglés DOL; usualmente evalúa casos relacionados con la “renuncia voluntaria”. “Abandonar el trabajo sin tener una razón justificada atribuible al mismo” puede ser una causal para descalificar completamente la obtención de beneficios. Antes de

descalificar a alguien, el DOL también debe evaluar el asunto de “la conveniencia del nuevo empleo”. Esto puede resultar en una asignación o una descalificación de prestaciones durante cuatro semanas, en lugar de una descalificación total.

¿Cómo puedo saber si mi caso implica “la conveniencia del nuevo empleo”?

Asuntos de la conveniencia de un nuevo trabajo, pueden surgir cuando:

- Una persona desempleada, recibe una oferta para que trabaje con un nuevo empleador, con el que no existen nexos laborales

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anteriores.

- Una persona que fue despedida sin que se fijara una fecha de reintegro, el empleador anterior decide hacerle una nueva oferta de contratación; o
- Una persona recibe la oferta de su empleador actual para que siga trabajando para él pero realizando un trabajo con condiciones y términos distintos a los acordados en el contrato laboral vigente, lo que implicaría desempeñarse en otras funciones.

Si el empleador a partir de las condiciones iniciales de contratación, incluye cambios significativos en su contenido de trabajo que pueden considerarse como un “nuevo empleo” y a usted no le resultara práctico aceptar los términos de la nueva oferta, entonces podría abandonar el trabajo y todavía cobrar los subsidios del desempleo. Ejemplos de estas variaciones: el número de horas a trabajar, el turno, sus funciones, la ubicación del local, el salario, los beneficios, el ambiente laboral o las condiciones de salud y seguridad. Si por el contrario los términos de la nueva oferta eran adecuados y usted, de todas formas dejó el trabajo, entonces correspondería descalificarle durante cuatro semanas.

¿Cómo determinará el Departamento del Trabajo si una oferta de trabajo es adecuada o no?

En Nueva Jersey, para determinar si una nueva oferta de trabajo es adecuada, el Departamento del Trabajo examinará las circunstancias

individuales del solicitante. Para ello tiene en cuenta consideraciones comunes a analizar tales como: la dinámica de la familia, las obligaciones del reclamante respecto al cuidado infantil, el acceso a los medios de transporte de ida y vuelta al trabajo, si tiene limitaciones físicas, su experiencia laboral, las creencias religiosas que profesa y sus convicciones morales. Si los términos de la nueva oferta imponen una carga sustancial en el reclamante, la nueva oferta se considera como inadecuada.

¿Cuál es la diferencia entre un caso que se enfoca en “la conveniencia del nuevo empleo” y un caso por una “renuncia voluntaria”?

En un caso donde hubo una “renuncia voluntaria”, para acceder a las prestaciones por desempleo, usted tiene que demostrar que ha dejado de trabajar por una “razón justificada atribuible al trabajo”. Demostrar una “razón justificada” para hacer una



Demonstrar una “razón justificada” para hacer una renuncia voluntaria puede ser difícil.

El DOL a menudo no se enfoca en los asuntos referentes a la conveniencia de un nuevo empleo y evalúa los casos como referentes a la “renuncia voluntaria”.

renuncia voluntaria puede ser difícil. Tendrá que mostrar que las condiciones laborales eran desfavorables, nocivas o insalubres al punto de que cualquier persona sin lugar a dudas, abandonaría el puesto. Por otro lado es necesario aclarar que no constituyen “razón justificada” para dejar el empleo, aquellas razones personales aportadas como argumento tales como: el cuidar a un pariente enfermo y las obligaciones respecto al cuidado de los hijos, los problemas asociados al transporte; lo que resultará en la descalificación completa para recibir beneficios

En los casos de una nueva oferta de trabajo, por otro lado, *sí se toma* en cuenta las razones personales que existen para no aceptar el nuevo empleo. Usted tal vez no tenga que encarar ninguna descalificación para recibir beneficios aun si no acepta una nueva oferta de trabajo debido a circunstancias personales. Es posible que usted gane su caso al argumentar la conveniencia del trabajo pero perdería exactamente el mismo caso al argumentar una renuncia voluntaria.

He aquí un ejemplo de cómo funciona esto en la práctica:

Bill trabaja como cajero en un establecimiento de comida rápida. Él es un padre soltero, y cuando él está en el trabajo, su madre cuida a sus hijos. La madre de Bill no tiene una licencia de

conducir y no puede recoger a los niños en la escuela. Bill los tiene que recoger y llevarlos a casa antes de ir a trabajar.

El empleador le dice, “ya no te necesitamos en esta ubicación, pero queremos que trabajes en una franquicia diferente que está a 30 minutos”. Aunque no es tan lejos y Bill tiene su propio coche, Bill no puede ir a la nueva ubicación porque le resultaría imposible recoger a sus hijos en la escuela. Él no puede darse el lujo de contratar a alguien para que los recoja y no hay un servicio de autobús que los lleve a casa. Bill rechaza la oferta y queda desempleado.

Entonces Bill solicita el desempleo y explica, “Yo no podría ir al restaurante en la nueva ubicación porque yo tendría que ir a la escuela a recoger a mis hijos. El examinador lo descalifica para recibir los beneficios porque Bill no argumentó una “razón justificada” para renunciar voluntariamente al empleo.

En esta situación, si Bill sostiene que la nueva ubicación constituía un cambio significativo a las condiciones de su empleo, y que le era inadecuado porque ya no podría recoger a sus hijos de la

escuela, entonces el asunto se convierte en un caso que corresponde a “la conveniencia del nuevo empleo”, y las circunstancias personales de Bill se tienen que tomar en cuenta. La pregunta ya no es si “¿El recoger a sus hijos constituye una razón justificada?” Reformulando la pregunta correspondería decir, “¿Era la nueva oferta de empleo adecuada para Bill?”

¿Cómo puedo asegurarme de que el Departamento del Trabajo analizará mi caso como un asunto respecto a “la conveniencia del nuevo empleo”?

El DOL a menudo no se enfoca en los asuntos referentes a la conveniencia de un nuevo empleo y evalúa los casos como referentes a la “renuncia voluntaria”. Si usted cree que su caso implica la conveniencia del nuevo empleo, le debe preguntar al examinador de las reclamaciones, du-

rante la entrevista para determinar los hechos, que analice esa cuestión. Si el examinador no la analiza, usted tendrá que plantear el asunto durante la apelación.

Si el tema de “la conveniencia del nuevo trabajo” (también denominado como “rechazo del nuevo empleo”) no se menciona en la notificación de audiencia ante el Tribunal de Apelación, escríbale al examinador de apelaciones antes de la audiencia y pida que en la notificación de audiencia se reseñe dicho asunto. Si no consigue hacerlo, pídale al examinador, tan pronto como se inicie la audiencia, evaluar el asunto. Si el Tribunal de Apelaciones no evalúa correctamente el problema, usted lo puede apuntar en su apelación ante la Junta de Revisión. □

Este artículo fue traducido del inglés por Al Moreno, coordinador del servicio lingüístico en LSNJ.



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