

# Looking Out For Your Legal Rights®

November 2018

Published by Legal Services of New Jersey

Volume 37, Number 9

2019 cost of living increase to affect Social Security benefits.

Page 1

Know the employment protections for New Jersey domestic workers.

Page 3

Enroll in ACA through December 15.

Page 4

Minimum wage increase and other changes help low-wage workers.

Page 5

Three steps to driver's license restoration.

Page 6

"Severe misconduct" disqualification removed from unemployment law.

Page 9

*Cuales son sus derechos legales*  
La versión en español la encontrará al reverso.

## Cost Of Living Increase Will Affect Social Security Benefits

**THE FEDERAL GOVERNMENT** has announced a 2.8% cost of living increase (COLA) that will affect some federal cash benefits, including Social Security Retirement, Social Security Disability, and Supplemental Security Income.

### How much will my benefits increase?

People who receive monthly Social Security Retirement and Disability benefits should get an increase of 2.8% starting in January 2019. For example, a person getting \$1,000 in monthly Social Security Disability benefits in 2018 will receive \$1,028 in 2019.

The maximum rate for Supplemental Security Income (SSI) benefits will increase by 2.8% in 2019. That may result in an increase of about \$21 per month for individuals and \$32 per month for couples where both are entitled to SSI. Keep in mind that other income can affect how much SSI you receive.

### Other Effects of the COLA

#### *Disability Threshold*

The cost of living adjustment, also known as COLA, has other effects on Social Security benefits. Social Security publishes a "disability threshold" amount every year. Earning over that amount can sometimes affect whether you can get disability benefits. The disability threshold amount

*Continued on page 2*

Continued from page 1



for 2018 was \$1,180 per month. In 2019 it increases to \$1,220 per month based on the COLA. There is a different rate for people who are blind. Their monthly disability threshold amount increases from \$1,970 per month in 2018 to \$2,040 per month in 2019. Please note rules are different for income from self-employment.

### Trial Work Period

Some people who receive Social Security Disability benefits are entitled to a “trial work period.” This trial work period allows them to attempt work and earn money for a period of time before Social Security cuts off their

disability benefits. In 2018, Social Security counted earnings of \$850 or more in one month as a trial work period month. In 2019 that amount will increase to \$880 per month due to the COLA. Please note that the trial work period does not apply to SSI benefits.

### Student Earned Income Exclusion

The Student Earned Income Exclusion, a work incentive for certain SSI recipients, is also adjusted by the COLA. In 2018, qualified students could exclude \$1,820 of income per month from being counted against their SSI benefits, up to a maximum of \$7,350 per year. In 2019, those amounts will increase to \$1,870 per month to a maximum of \$7,550 per year.

### What about resource limits?

Unfortunately, countable resource limits for Supplemental Security Income are not affected by the COLA. The SSI resource limit for individuals remains \$2,000 for individuals and \$3,000 for couples.

By Kevin Liebkemann, Chief Counsel, LSNJ

## Looking Out For Your Legal Rights®

### About Looking Out

*Looking Out for Your Legal Rights* is published 10 times a year by Legal Services of New Jersey. If you are a Legal Services client, you can pick up a copy at your local Legal Services office. You may also read *Looking Out* on our website at [www.lsnjlaw.org](http://www.lsnjlaw.org).

### Subscriptions

Subscriptions are \$20 a year. For more information, please email [publications@lsnj.org](mailto:publications@lsnj.org)

### Back Issues

View back issues at [www.lsnjlaw.org](http://www.lsnjlaw.org).

### Change of Address

If you are moving, please send us your new address and a copy of your *Looking Out* mailing label.

### Comments

If you have any suggestions or comments about *Looking Out*, we would like to hear from you. Please send all correspondence to:

Editor, *Looking Out*  
Legal Services of New Jersey  
P.O. Box 1357  
Edison, NJ 08818-1357  
[publications@lsnj.org](mailto:publications@lsnj.org)

**This newsletter is for general information only. If you have a legal problem, you should see a lawyer.**

**A portion of the cost of this publication was supported by funds provided by the IOLTA Fund of the bar of New Jersey.**

© 2018 Legal Services of New Jersey

*Looking Out For Your Legal Rights* is a federally registered trademark of Legal Services of New Jersey.

## Know the Employment Protections for New Jersey Domestic Workers

**DOMESTIC WORKERS**, such as nannies, housekeepers, and caregivers, provide household labor in private homes.

Home health care workers, also referred to as caregivers or companions to the sick, disabled, or elderly, are also domestic workers. They live inside or outside the household in which they provide care, and can be employed by a household or by an agency.

Casual, part-time babysitters are exempt from both federal and New Jersey employment laws and are not included within the term “domestic worker.”

Many domestic workers are immigrants, and some are undocumented immigrants. Most of the labor laws discussed below protect domestic workers regardless of their immigration status. For example, immigration status does not affect the right to be paid, nor eligibility for workers compensation. However, undocumented workers are not eligible for unemployment insurance benefits.

For more information regarding unpaid wages or overtime, visit the Wages and Hours section of our website, [www.lsnjlaw.org](http://www.lsnjlaw.org).

### Minimum Wage and Overtime

All domestic workers are covered by New Jersey minimum wage and overtime laws. The 2018 minimum wage in New Jersey is \$8.60 per hour; for 2019, \$8.85 per hour.

An employer must schedule payday ahead of time with the worker. Employees must be paid at least twice a month, and no more than 10 days after the end of the pay period. If employment ends for any reason, the worker must be paid by the next regularly scheduled payday. The employer cannot

force the worker to accept direct deposit of wages, but it can be an option.

All domestic workers, including home health care and live-in domestic workers, are entitled to overtime pay at one-and-a-half times the regular hourly rate for every hour worked over 40 hours.



### Sleep Time and On-Call Time

An employee’s time in the workplace should be counted as hours worked. When employees are not required to stay on the employer’s premises and are free to spend time for personal pursuits, only time actually spent working counts as hours worked for the purposes of wage payment.

However, an employee called to work by the employer must be paid for at least one hour, even if the employee is immediately sent home. If an employee is called to work so frequently, or if the employee’s on-call time is so restricted, that he or she is not free to use the time effectively for personal pursuits, the waiting time counts as hours worked.

Live-in domestic workers and other employees with irregular on-duty hours must be paid for at least eight hours of each day on duty. In most cases such workers should be paid for all hours worked. Only in limited situations

where it is not feasible to count hours—excluding breaks and on call time, which should be counted anyway—is there an exception, but workers generally should be paid for all hours worked.

### Meal and Rest Breaks

Employers are not required to provide a meal or rest break. However, if the employer does provide rest breaks, from five to 20 minutes, that time is payable to the worker as time worked.

### Deductions

Employers can make food and lodging deductions, but they must keep record of the costs. Employers should not deduct housing costs for domestic workers if the housing is for the benefit of the employer, to have the worker readily available. Deductions are limited to the “fair value,” which cannot be more than the actual cost and cannot include employer profit. Employers may not count items that primarily benefit themselves as a deduction.

If the employer-provided lodging

violates any laws, or if no fair-market rental value exists for the lodging in the competitive open market, fair value is considered zero, and the employer cannot deduct such lodging costs from pay.

### Workers Compensation

Domestic workers are entitled to workers compensation. Immigration status has no bearing on eligibility. Claims must be filed within two years of the relevant accident. For more information, visit the Workers Compensation section of our website, [www.lsnjlaw.org](http://www.lsnjlaw.org).

### Record-Keeping

Do keep records of wages, deductions, and hours worked whenever possible. Domestic workers are commonly paid in cash, making it harder to prove eligibility for benefits or wage claims.

In New Jersey, all employers are required to keep detailed records of wages and working conditions for six years. Any employer who makes deductions from wages for food and lodging must keep records of those deductions. □

---

*By Keith Talbot, Senior Counsel, LSNJ Workers Legal Rights Project*

## ACA Enrollment Runs through Dec. 15

If you do not have health care coverage through NJ FamilyCare, Medicare, or your employer, you may qualify for a subsidized insurance policy through the Affordable Care Act. Open enrollment period for 2019 runs through December 15. Visit [www.GetCovered.NJ.gov](http://www.GetCovered.NJ.gov) or one of the following organizations:

- The Center for Family Services (1-877-922-2377)
- The Family Resource Network (1-800-355-0271)

- The Oranges ACA Navigator Project (1-973-500-6031)
- Fulfill Monmouth & Ocean (1-732-918-2600 or 1-732-731-1400)
- Urban League of Hudson County (1-201-451-8888, ext. 217)

NOTE: The federal tax penalty for not having health insurance coverage has been repealed for 2019, but New Jersey has imposed a similar state tax penalty. This open enrollment period may be your last chance to avoid a tax penalty on your 2019 NJ income tax return. □



## Recent Changes to the Law Help Low-Wage Workers

### NJ Minimum Hourly Wage Increasing to \$8.85

Low-wage workers in New Jersey will soon see a 25-cent increase in the minimum hourly wage, to \$8.85. Since 2013, the state's annual increases in minimum hourly wages have been based on changes in the Consumer Price Index. The new minimum wage rate for overtime (over 40 hours in a week) should be \$13.28. Workers who work on salary, piece, or task rates will often be eligible for overtime, even if not paid on an hourly rate, unless there is a specific exemption that applies to them.

New Jersey employers are also required to give their state employees notices about the employees' rights under certain state and federal laws. These notices need to be posted and followed.

### Earned Sick Leave

Effective October 29, 2018, the New Jersey Earned Sick Leave Law allows employees to accrue one hour of earned sick leave for every 30 hours worked, up to 40 hours each year. The law allows employers to create policies that provide additional leave time. Workers can use these benefits for routine medical care; care for sick family members; to deal with issues related to domestic or sexual violence, to attend a child's school-related meeting or event, or when schools are closed due to a public health emergency.

Employers must provide each employee with written notice of the employee's right to earned sick leave, in-

cluding accrual and use of earned sick leave, and the right to file a complaint and be free from retaliation. The notice must state the start and end dates of the employee's benefit year. Employees have a right to the notice in English and, if applicable, in the employee's first language. The notice is available in English and 12 other languages on the Department of Labor website. For more information about this new law, go to [www.nj.gov/labor/earnedicks/index.html](http://www.nj.gov/labor/earnedicks/index.html).

### New Procedures for New Jersey Unemployment Claims

The state's Department of Labor has introduced a new procedure for unemployment claims. Instead of a telephone interview by an agency Deputy, a written form will be provided to many claimants at the beginning of claims. This can speed up the initial procedure, but make sure you protect your rights.

If you have an email address on file with the agency, the agency will send you a secure link that will take you to an online application where you'll be asked to complete information about your claim. You have a right to get an attorney's advice in the claims process, and a due process right to answer employer responses. You may want to contact Legal Services to discuss the online form before submitting it. You should also ask to respond to employer statements and positions, since you may not know the employer's position when you complete the form. □

---

*By Keith Talbot, Senior Counsel, LSNJ Workers Legal Rights Project*

## Three Steps to Driver's License Restoration

**NOT HAVING** a driver's license may make it impossible to take care of daily basic needs, keep a job, or keep an important appointment, such as a court hearing or a visit to the doctor. Many states allow people with suspended licenses to continue to drive for work or medical reasons. However, New Jersey does not allow anyone with a suspended license to drive for any reason. If you have had your license suspended, this article explains the three steps you must take to get it back. Another article on [www.lsnjlaw.org](http://www.lsnjlaw.org), *Eight Most Common Types of Driver's License Suspensions*, explains the eight most common reasons for suspensions and how to have each type of suspension lifted.



### Step One: Getting More Information

First, you must find out why your driver's license was suspended. The easiest way to do this is to call the Motor Vehicle Commission (MVC) at (609) 292-6500 or toll-free at 1-888-486-3339. An MVC staff person will review your driver history abstract. A driver history abstract is the record kept by the MVC listing all information related to your driver's license, including reasons why your license has been suspended. When you speak to the MVC repre-

sentative, listen carefully and write the information down. Be sure to find out the following information:

- How long you must wait to restore your license;
- If you owe surcharges to the MVC and how much;
- If you need to complete an MVC program, such as a Defensive Driving Course or an Intoxicated Driving Resource Center (IDRC) program;
- Which courts to contact if you need to pay outstanding fines or appear in court; and
- If you owe child support payments.

### Getting a written copy of your driver history abstract

You will not be mailed a copy of your driver history abstract just by calling the numbers listed above. To get a written copy of the abstract, you must complete an Abstract Request Form and return it along with a \$15 check to the address indicated on the form. You may purchase a copy online at [www.state.nj.us/mvc/license/driverhist.htm](http://www.state.nj.us/mvc/license/driverhist.htm) with an email address and a credit card. You can also purchase a copy in person for \$15 at any of the four MVC regional service centers located in Eatontown, Trenton, Wayne, and West Deptford. Go to the MVC website, [www.state.nj.us/mvc/locations/facilitylocations.htm](http://www.state.nj.us/mvc/locations/facilitylocations.htm), for the addresses of these facilities.

### Step Two: Understanding How to Lift the Suspension

Suspensions can be ordered by the court or the MVC. You can find out who ordered your suspension by calling the MVC or by looking at your driver history abstract.

## New Jersey does not allow anyone with a suspended license to drive for any reason.

---

### Court-ordered suspensions

A court will order a driver's license suspension for a variety of reasons, including motor vehicle, criminal, or juvenile justice code violations; failure to pay a parking ticket, a court-ordered fine, or child support; or failure to appear in court. In some cases, a suspension will last a set amount of time, such as six months. In other cases, a suspension lasts until you appear in court or pay a fine. The MVC representative will be able to identify which courts you need to contact to get more information about your type of suspension.

Once you have resolved all outstanding court matters, the MVC will be notified either by the court or by you when you bring documentation to the MVC. Once all court and MVC suspensions have been lifted, you may restore your license.

### MVC-imposed suspensions

Even after you have resolved all court-related matters, you may still not be able to restore your license. This is because the MVC may have ordered the suspension for other reasons, such as:

- Failure to pay MVC fines (called surcharges);
- Failure to complete a course required by the MVC;
- Earning too many points;
- Driving without insurance; or
- Being a "habitual offender." A habitual offender is someone who has had his or her license suspended three times in a three-year period.

When you speak to the MVC staff, try to find out if the MVC has suspended

your license and what you must do to have the suspension lifted. The MVC staff will explain what you must do. For example, you may be able to arrange a payment plan for outstanding surcharges, giving the MVC a down payment and paying the balance over time.

As long as you have no outstanding court-ordered suspensions, you will be eligible to restore your license after you have resolved the reasons for the MVC suspensions.

### Step Three: When Can I Drive My Car?

Even after resolving all court and MVC matters, your driving privileges are not automatically restored. First, you must call the MVC to find out if all your suspensions have been lifted and to make sure that you are eligible to restore your license. Then you must pay the license restoration fee of \$100. If you also need to restore your registration, you must pay another \$100 registration restoration fee. If you have not driven for more than three years, you will probably need to retake the written or road test. Ask the MVC if you are required to take these tests. To get your new license, you must pay \$24 and show six points worth of identification, along with proof of address, at a motor vehicle agency. You can find more information about the six-point ID verification system online at [www.state.nj.us/mvc/Licenses/6PointID.htm](http://www.state.nj.us/mvc/Licenses/6PointID.htm) or by calling the MVC's toll-free number, 1-888-486-3339.

You should drive only after you have a valid new driver's license in your possession and written notice from the MVC that your driving privileges have been restored.

**WARNING!**

Arrest warrants may be issued for failure to appear in court, unpaid parking tickets, unpaid court-ordered penalties, or unpaid child support. To avoid arrest, you should first call each court identified by the MVC to ask if a warrant has been issued. If you appear in person, there may be serious consequences, including arrest, incarceration, or an order that you pay bail.

If a warrant has been issued for your arrest, try to get an attorney to represent you. In court, a judge has a duty to inform you about the public defender or municipal public defender. However, by that time it may be too late. It is best to contact an attorney before appearing in court. Each municipal court in New Jersey has a public defender.

When you call the court about a possible warrant, ask for the name and phone number of the municipal public defender. You may have to pay a fee for municipal public defender representation.

There is also a state public defender's office, but it only represents people accused of serious (indictable) crimes. For information about the state public defender's office, call (609) 292-7087 or visit [www.state.nj.us/defender](http://www.state.nj.us/defender).

**Where can I get more information?**

More information about driver's license suspensions and restoration is available in the following sources:

- Nancy L. Fishman, Esq., John W. Bartlett, Esq., and Lowenstein Sandler, P.C., *Getting Back on the Road: A Manual for Addressing Driver's License Suspension in New Jersey*, New Jersey Institute for Social Justice, (July 2008);
- The MVC website; and
- New Jersey Statutes Annotated, Title 39, Motor Vehicle and Traffic Regulations, Chapter 5. (N.J.S.A. 39:5).

**What if I need more help?**

Legal Services of New Jersey (LSNJ) provides free legal assistance to low-income people. If you need help or more information, you may contact LSNJLAW<sup>SM</sup>, LSNJ's statewide, toll-free legal hotline, at 1-888-LSNJ-LAW (1-888-576-5529) or apply for help online. If you are not eligible for assistance, the hotline will refer you to other possible resources.

*See our website, [www.lsnjlaw.org](http://www.lsnjlaw.org), for more information on motor vehicle laws.*

**LSNJLAW<sup>SM</sup>, Legal Services of New Jersey's Statewide Toll-Free Legal Hotline**

Read more about your legal rights on our website, [www.lsnjlaw.org](http://www.lsnjlaw.org). If you have questions or need legal advice with a civil legal matter, contact LSNJLAW<sup>SM</sup>, 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](http://www.lsnjlawhotline.org). Hotline hours are Monday through Friday, 8 a.m. to 5:30 p.m. The hotline provides free legal assistance to low-income New Jersey residents in civil legal issues. If you are not eligible for assistance from Legal Services, the hotline will refer you to other possible resources.



## “Severe Misconduct” Disqualification Removed from Unemployment Law

ON AUGUST 24, 2018, Governor Murphy signed a new law that removes the “severe misconduct” disqualification from the unemployment law and changes the definition of “misconduct” (also referred to as “regular” or “simple” misconduct). It also reduces the penalty for misconduct from an eight-week disqualification from benefits to a six-week disqualification. These changes mark an important, positive change in the unemployment process for New Jersey’s workers.

Prior to 2010, the unemployment law contained two types of misconduct disqualifications: misconduct and gross misconduct. A person found by the New Jersey Department of Labor to have been fired for misconduct was

---

**By removing severe misconduct and redefining simple misconduct, the unemployment law is more clear and fair.**

---

disqualified from unemployment benefits for six weeks, and a person fired for gross misconduct (conduct punishable as a first, second, third, or fourth degree crime) was completely disqualified from benefits. In addition to the disqualification, a person terminated for gross misconduct could not reapply for benefits for one year.

In 2010, New Jersey lawmakers added a third type of misconduct to the unemployment law called “severe misconduct.” Severe misconduct completely

disqualified a person from benefits until they worked at least eight weeks and earned ten times their weekly benefit rate in a new job. The law also increased the penalty for regular misconduct from six weeks to eight weeks. The addition of the severe misconduct standard caused great confusion and created a system that imposed harsh penalties for relatively minor violations. Severe misconduct penalized low-wage workers, who are terminated for minor violations (like being a few minutes late to work), far more often than higher paid workers. By removing severe misconduct and redefining simple misconduct, the unemployment law is more clear and fair.

Under the new law, claimants fired from their jobs for misconduct now may only be disqualified from unemployment benefits for misconduct or gross misconduct. Misconduct is defined as “conduct which is improper, intentional, connected with the individual’s work, within the individual’s control, not a good faith error of judgment or discretion, and is either a deliberate refusal, without good cause, to comply with the employer’s lawful and reasonable rules made known to the employee or a deliberate disregard of standards of behavior the employer has a reasonable right to expect, including reasonable safety standards and reasonable standards for a workplace free of drug and substance abuse.” The penalty for misconduct is once again, a six-week disqualification from benefits. The definition of and penalty for gross misconduct has not been changed. □

---

*By Sarah Hymowitz, Supervising Attorney, LSNJ Workers Legal Rights Project*

## Know Your Welfare Rights!

If you are getting welfare or applying for welfare and you have a problem with domestic violence, the welfare office can give you special help.

### What kind of help can I get?

The welfare program has special rules for victims of domestic violence, rape, or incest, concerning:

- **Work requirements**—Most people who get welfare must participate in a work activity right away in order to get cash assistance. You do not have to participate in the welfare work program right away if you need extra time because of domestic abuse.
- **Time limits on benefits**—Welfare cash benefits under the WFNJ welfare program are limited to 60 months. You can get additional benefits if you need extra time because of domestic abuse.
- **Child support cooperation**—If you are applying for welfare for your children, the welfare office will ask you to provide information about the other parent so that child support can be collected. You do not have to provide information about an abuser if you can show that you or your child will be emotionally or physically harmed if you do.
- **Residency requirements**—If you are under age 18 and pregnant or caring for a dependent child, you do not have to live in the home of your adult guardian/ parent if there is a threat to your emotional health or physical safety or a

risk or history of physical/ sexual abuse to you or your child.

- **Assistance for children**—Generally, if you have another child while receiving TANF, your cash benefits will not increase due to a family cap. However, if the child was conceived as a result of rape, incest, or domestic violence, your TANF benefits usually will be increased.

These special rules are called the *Family Violence Option*. N.J.A.C. 10:90-20.

### How do I get this help from the welfare office?

The welfare office must notify all applicants and recipients of these exceptions and their right to ask that any of these special rules be applied to them. You don't need to have a restraining order, a police report, or medical records to qualify for these special domestic violence rules.

When you first apply for welfare, a welfare worker is supposed to offer you an opportunity to apply for these exceptions by meeting with a welfare worker with training in domestic violence. This person is called a county welfare agency Family Violence Option representative (CWA FVO representative). You do not need to discuss domestic violence with the caseworker. But make sure that he or she refers you to the CWA FVO representative. At any time, you can ask for a referral to the FVO representative.

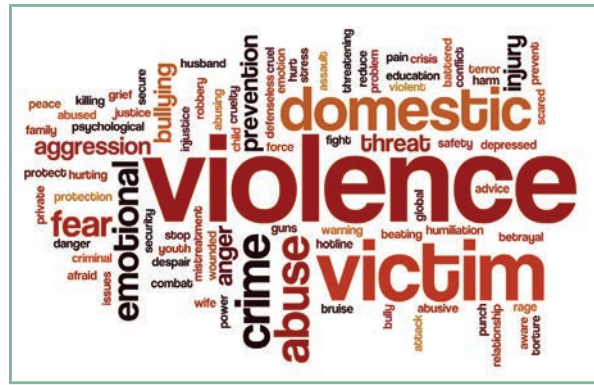
You can ask the CWA FVO rep-

representative to have any or all of the exceptions applied to you. The domestic violence representative will grant you a temporary waiver, meaning that you will be excused from the regular welfare requirements until your situation is reviewed. You will then be sent to meet with a domestic violence specialist working in a program for victims of domestic violence, outside of the welfare agency, for a risk assessment. The domestic violence program will meet with you or talk with you by phone to review your situation for a risk assessment and make a final decision about whether you should be excused from any of the welfare requirements. They will then inform the CWA FVO of their decision. Once you are excused from welfare requirements, you will be reevaluated at least every six months to see if your situation has changed.

The domestic violence program must also develop a safety and service plan, for you to get helpful services, such as counseling, legal help, medical attention, and housing assistance, so that you may be able to work eventually. You can discuss with the program representative the type of help you think you need. This will be part of your Individual Responsibility Plan (IRP), a plan developed for all welfare recipients to assess their needs and address any issues or problems that prevent them from working. The welfare agency can provide you with transportation and other necessary services so that you can participate in services.

### Getting away from the abuser:

You may feel that you and your family must move away from your abuser. If you need help to get away, ask the



welfare office for, or ask the domestic violence program representative you speak with, to help you get:

- Cash assistance right away (immediate need assistance) N.J.A.C. 10:90-1.3
- Emergency shelter or other temporary housing assistance (Emergency Assistance) N.J.A.C. 10:90-6.1

### What if the welfare office won't give me the help I need?

If you are denied one of the exceptions discussed above, you can:

- Ask for a hearing to challenge the welfare office's decision.
- Get legal help. You can contact your local Legal Services program in your county for free legal assistance.

If you need more information about your rights concerning a domestic violence problem, free legal help is available to low-income New Jersey residents by calling LSNJLAW<sup>SM</sup>, 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](http://www.lsnjlawhotline.org). □

# Cuáles son sus derechos legales

Noviembre 2018

Publicado por los Servicios Legales de Nueva Jersey

Presentar una declaración conjunta va más allá de poner la firma al final de la declaración de impuestos. *Página 1*

Los cambios que se le hicieron a la ley, y que se hicieron efectivos a partir del 1 de octubre de 2018, podría afectar su capacidad para eliminar sus antecedentes penales y juveniles. *Página 5*

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

## La declaración de impuestos conjunta y el alivio para el cónyuge inocente

**¿SABÍA USTED** que aún si está casado, no es necesario que presente la misma declaración de impuestos que su cónyuge? Puede declarar en conjunto o por separado. Existen ventajas y desventajas para ambos métodos dependiendo de las circunstancias de cada uno. (Para obtener más información acerca de cada opción, vea la gráfica al final de este artículo).

### Para presentar una declaración conjunta

Presentar una declaración conjunta va más allá de poner la firma al final de la misma. Si declara en conjunto con su cónyuge y la información es falsa o errónea,

*Continúa en la página 2*

El boletín de educación jurídica para los habitantes de Nueva Jersey



el recaudador IRS tiene el derecho de cobrarle los impuestos que se deban a cualquiera de los dos ya que ambos firmaron. No es necesario que el IRS trate de averiguar quién fue el que cometió el error o a quién se le olvidó reportar todos los ingresos. Es posible que el gobierno inicie una acción jurídica en contra de ambos o de un cónyuge individualmente. Aún si se separaron o divorciaron, el IRS tiene el derecho de elegir la manera en la que cobrará los impuestos. El IRS no está obligado a obedecer la orden de divorcio que indica que uno de los cónyuges tiene que pagar los impuestos. Si decide presentar una declaración conjunta, lo mejor que puede hacer es leer la declaración con cuidado antes de firmarla, ya que se le podría hacer responsable de todo el contenido.

### ¿Qué debo hacer si presenté una declaración conjunta y ahora me están cobrando por un error que mi cónyuge o ex cónyuge cometió?

Si piensa que no es responsable de los errores en la declaración conjunta,

existen tres formas en las que puede liberarse del pago de los impuestos. En cada una de las situaciones, tan pronto como se entere del problema o error, tendrá que presentar el Formulario 8857 del IRS. El Formulario 8857 tendrá que presentarse antes que se cumplan dos años desde la fecha en que el IRS trató de cobrar el impuesto por primera vez.

### Opción 1: El alivio para el cónyuge inocente

La primera forma de liberarse de las responsabilidades de pagar los impuestos es por medio del alivio para el cónyuge inocente, *innocent spouse relief*. Para poder pedir este alivio, tendrá que reunir las siguientes condiciones:

- Tiene que haber presentado una declaración conjunta. Esa tiene que contener una subestimación de los impuestos directamente relacionada con los ingresos no declarados de su cónyuge (o ex cónyuge), o las deducciones o créditos incorrectos de su cónyuge o ex cónyuge;
- Tiene que demostrar que cuando

## Cuáles son sus derechos legales

### Con respecto a Looking Out

*Looking Out for Your Legal Rights*® es publicada 10 veces al año por los Servicios Legales de Nueva Jersey. Si usted es un cliente de los Servicios Legales, puede obtener una copia en la oficina de Servicios Legales de su localidad. También puede leer *Looking Out* en nuestro sitio Web [www.lsnj.org/espanol](http://www.lsnj.org/espanol).

### Suscripciones

La suscripción cuesta \$20 dólares por año.

### Números atrasados

Puede ver números atrasados en [www.lsnj.org/espanol](http://www.lsnj.org/espanol).

### Cambio de dirección

Si se muda, envíenos su nueva dirección y una copia de la etiqueta pedaga al último ejemplar de *Looking Out*.

### Comentarios

Si tiene alguna sugerencia o comentario con respecto a Looking Out, nos gustaría oírlo. Envíe toda correspondencia a:

Editor, *Looking Out*  
Legal Services of New Jersey  
P.O. Box 1357  
Edison, NJ 08818-1357  
[publicaciones@lsnj.org](mailto:publicaciones@lsnj.org)

Este boletín de noticias es sólo una información general. Si tiene un problema jurídico, usted debería ver a un abogado.

Una parte del costo de esta publicación se cubrió con la ayuda proporcionada por el fondo IOLTA del colegio de abogados de Nueva Jersey.

firmó la declaración, no sabía ni tenía razón de saber que había una descripción insuficiente en los impuestos; y

- Tiene que demostrar que, según los hechos y circunstancias, no sería justo que tenga que sufrir las consecuencias de los impuestos que no se pagaron.

El IRS tomará en cuenta los hechos y circunstancias de cada caso para determinar si es injusto que se le tenga que responsabilizar de tal cosa. Estos son los factores que el recaudador IRS tendrá en cuenta:

- Si sacó provecho de la descripción insuficiente;
- Si su cónyuge o ex cónyuge le abandonó; y
- Si se ha separado o divorciado de su pareja.

**El IRS no le otorgará la petición del alivio para el cónyuge inocente, si logran demostrar que usted y su cónyuge (o ex cónyuge) transfirieron bienes del uno al otro o a una tercera parte, por ejemplo un acreedor, ex cónyuge o socio comercial, con el propósito de estafar al recaudador de impuestos.**

### **Opción 2: El alivio por medio de la separación de la responsabilidad del pago**

La segunda forma para liberarse de las responsabilidades de pagar los impuestos es el alivio por medio de la separación de la responsabilidad del pago. Para solicitar dicho alivio tiene que haber presentado una declaración conjunta y demostrar que usted:

- Es viudo, divorciado o separado legalmente del cónyuge con el que presentó la declaración; y
- En ningún momento, en los 12 meses antes de la fecha en la que

se presentó la solicitud del alivio, fue parte de la familia de dicho cónyuge.

Bajo este tipo de alivio, dependiendo de los hechos de la situación individual, el IRS responsabiliza a ambas personas por la parte del impuesto que no se pagó. El alivio mencionado aquí no se aplicará a ninguna parte de lo incluido, si usted sabía acerca de los errores inscritos en la declaración de impuestos.

**Nota: Existe una excepción para los casos de abuso doméstico.** Aún si supo acerca de los errores en las declaraciones de impuestos, podría recibir el alivio por medio de la separación de la responsabilidad del pago si fue víctima de violencia doméstica antes de firmar la declaración y no pudo cuestionar la información por miedo de sufrir represalias.

### **Opción 3: El alivio equitativo**

La tercera forma de liberarse de las responsabilidades de pagar los impuestos es el alivio equitativo. El alivio equitativo se hizo para las personas que no cumplen con los requisitos de las dos primeras opciones. Para beneficiarse del alivio equitativo, debe cumplir con las siguientes condiciones y comprobar que usted:

- No reúne los requisitos para recibir el alivio para el cónyuge inocente ni el alivio por medio de la separación de la responsabilidad del pago.
- Usted y su cónyuge o ex cónyuge no hicieron transferencias de activos del uno al otro como parte de un plan fraudulento.
- Su cónyuge o ex cónyuge no transfirió ninguna propiedad a su nombre para evitar el pago de impuestos.
- No declaró ni tampoco dejó de hacerlo, con el propósito de com-

- eter una estafa.
- No dejó de presentar la declaración con el propósito de cometer una estafa.
- Usted no pagó los impuestos.
- Según los hechos y circunstancias, no sería justo que tenga que responsabilizarse por los impuestos que no se pagaron.
- Su cónyuge o ex cónyuge fue el que dio la información incorrecta o incompleta en el formulario para los impuestos.

### ¿Dónde puedo ir para recibir ayuda?

En el momento de revisar las peticiones para algún alivio, los funcionarios del servicio recaudador puede que sean muy cínicos. Por esa razón, siem-

pre y cuando sea posible, cuando esté buscando una reducción tributaria, lo mejor es usar los servicios de un experto. El programa de los Servicios Legales de Nueva Jersey para la asistencia jurídica al contribuyente puede ayudarlo. Llame a LSNJLAW<sup>SM</sup>, la línea directa gratuita de asistencia jurídica de los Servicios Legales de Nueva Jersey para todo el estado, al 1-888-LSNJ-LAW (1-888-576-5529) e indique que necesita ayuda con relación a su situación tributaria. Las horas de servicio de la línea directa son de lunes a viernes, desde las 8 de la mañana hasta las 5:30 de la tarde. Si usted no llena los requisitos para recibir asistencia de los Servicios Legales, la línea directa le enviará a otras posibles fuentes de información. □

*Este artículo fue traducido del inglés por Al Moreno, director del servicio lingüístico en LSNJ*

LOS TIPOS DE DECLARACIONES	VENTAJAS	DESVENTAJAS
<b>Casado con una declaración conjunta.</b>	Una tasa más baja de impuestos.	Cada cónyuge tiene la responsabilidad de pagar los impuestos.
	Todos los ingresos, deducciones y créditos se deben presentar en una declaración.	Una vez que se presente la declaración, no podrá cambiar al estado de casado presentando declaraciones separadas.
		Para liberarse del pago de los impuestos, los intereses o las multas, usted tendrá que solicitar el alivio al IRS.
<b>Casado presentando declaraciones separadas.</b>	Sólo se debe responsabilizar de los impuestos que debe por su propio ingreso y no se le obliga a que pague los impuestos del ingreso que gana su cónyuge.	Una tasa fiscal más elevada.
	Después de presentar la declaración, puede cambiar de opinión y modificar el estado al de casado presentando una declaración conjunta.	No podrá recibir el crédito tributario por gastos de cuidado de menores u otros dependientes.
		No podrá recibir el crédito tributario por ingreso laboral.
		El crédito tributario por hijos, el de las contribuciones a los ahorros para la jubilación, deducciones detalladas y las deducciones por exenciones personales disminuirán todas.
		Si su cónyuge hace una lista detallada de las deducciones, usted no podrá reclamar la deducción estándar.



El programa de LSNJ **Cómo borrar los antecedentes penales en línea**, por sus siglas en inglés **CYRO**, es un recurso gratuito en la Internet diseñado para ayudarle a borrar sus antecedentes penales como adulto y como menor de edad y le proporcionará información valiosa sobre la ley y el proceso para la eliminación de los antecedentes en Nueva Jersey. **ATENCIÓN: Las herramientas disponibles en el manual CYRO se actualizaron para reflejar los cambios que se le hicieron a la ley, y que se hicieron efectivos a partir del 1 de octubre de 2018. Estos podrían afectar la posibilidad de eliminar sus antecedentes penales. Por favor consulte nuestro sitio web, [www.lsnjlaw.org/sp](http://www.lsnjlaw.org/sp) para ver los cambios hechos o consulte con un abogado para obtener un consejo legal actualizado.**

# CÓMO BORRAR LOS ANTECEDENTES PENALES EN LÍNEA

El programa está diseñado para dar a aquellos que tienen uno o muy pocos delitos, la oportunidad de un nuevo inicio al borrar de sus historiales las detenciones y condenas. Está disponible en Nueva Jersey a aquellos que cumplen ciertos requisitos.

El programa de LSNJ **CÓMO BORRAR LOS ANTECEDENTES PENALES EN LÍNEA** proporciona varias funciones cruciales para el proceso de eliminación:

- **La entrevista para determinar la elegibilidad**-le guiará a través de una serie de preguntas y le indicará si usted reúne los requisitos para eliminar sus antecedentes como adulto o como menor de edad.
- **El creador de formularios**-utilizando la información que usted proporcione, generará los formularios que usted tendrá que presentar ante el tribunal para la eliminación de sus antecedentes.
- **Los videos instructivos**-proporcionan paso-a-paso información detallada sobre el proceso.



Otros recursos le proporcionarán orientación sobre la exención de costas y otros enlaces e información, además de nuestro manual original *Cómo borrar los antecedentes penales*.



Para acceder al programa, visite el sitio [www.lsnjlaw.org](http://www.lsnjlaw.org) y pulse en el icono azul **CÓMO BORRAR LOS ANTECEDENTES PENALES EN LÍNEA** ubicado en el lado derecho de la página.

Si necesita asistencia jurídica civil, no dude en llamar a LSNJLAW<sup>SM</sup>, nuestra línea directa gratuita de asistencia jurídica, 1-888-LSNJ-LAW (1-888-576-5529) o visite nuestro sitio Web, [www.lsnjlaw.org/sp](http://www.lsnjlaw.org/sp).