



LEXSTAT 41 N.J.R. 3781(A)

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RULE PROPOSALS

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

41 N.J.R. 3781(a)

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

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

Misconduct Defined

Authorized by: David J. Socolow, 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 2009-309.

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

Friday, November 6, 2009
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor and Workforce Development
John Fitch Plaza
Second Floor Large Conference Room
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 December 4, 2009 to:

David Fish, Regulatory Officer
Office of Legal and Regulatory Services
Department of Labor and Workforce Development
P.O. Box 110, 13th Floor
Trenton, New Jersey 08625-0110
Fax: (609) 292-8246

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The agency proposal follows:

Summary

The Department is proposing to amend *N.J.A.C. 12:17-10.2*, so as to replace the existing regulatory definition for the term "misconduct" with the definition of the term that appears in the leading case on the issue, namely, *Beaunit Mills v. Division of Emp. Sec.*, 43 N.J. Super. 172 (App. Div. 1956). Specifically, *N.J.A.C. 12:17-10.2(a)* currently states that, "[f]or 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." The court in *Beaunit Mills*, however, defined an act that would constitute misconduct as, "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 which the employer has the right to expect of his 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." At some time during the history of the regulations between 1956 and the present, the Department evidently sought to paraphrase the court's holding in *Beaunit Mills*. However, in doing so, it does appear that some of the meaning of the court's definition for the term "misconduct" was lost. Consequently, again, the Department proposes to replace the existing definition at *N.J.A.C. 12:17-10.1(a)* with the above quoted definition from the holding in *Beaunit Mills*.

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

Social Impact

The proposed amendment would have a positive social impact in that it would eliminate any possible confusion as to when 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*, for the week in which the individual has been suspended or discharged for misconduct connected with the work and for the five weeks that immediately follow that week.

Economic Impact

The proposed amendment would have a positive economic impact on both claimants and employers in that it would provide clarification with regard to the issue of disqualification due to misconduct connected with the work and, it is hoped, thereby avoid costs for claimants and employers of unnecessary litigation, which might otherwise result from the apparent inconsistency between *N.J.A.C. 12:17-10.2* and the holding in *Beaunit Mills*.

Federal Standards Statement

The proposed amendment does not exceed standards or requirements imposed by Federal law. Specifically, the proposed amendment is 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 amendment would have no impact on either the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendment would have no impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed amendment 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. The proposed amendment would simply address the definition of the term "misconduct" as it relates to disqualification for receipt of unemploy-

ment compensation benefits during the week in which the claimant has been [page=3782] suspended or discharged for misconduct connected with the work and for the five weeks that immediately follow that week.

Smart Growth Impact

The proposed amendment would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed amendment would not evoke a change in the average costs associated with housing. The basis for this finding is that the proposed amendment pertains to disqualification for receipt of unemployment compensation benefits, based on a finding of employee misconduct connected with the work and has nothing whatsoever to do with housing.

Smart Growth Development Impact

The proposed amendment would not evoke a change in the housing production within Planning Areas 1 or 2 or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed amendment pertains to disqualification for receipt of unemployment compensation benefits, based on a finding of employee misconduct connected with the work and has nothing whatsoever to do with housing production, either within Planning Areas 1 or 2 or within designated centers, or anywhere in the State of New Jersey.

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

SUBCHAPTER 10. CLAIMS ADJUDICATION--MISCONDUCT AND GROSS MISCONDUCT CONNECTED WITH WORK

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.] **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 which 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.**

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