

L a b o r & E m p l o y m e n t  
A L E R TJANUARY  
2008UNEMPLOYMENT BENEFITS NO LONGER  
AUTOMATICALLY AVAILABLE FOR EMPLOYEES  
WHO ACCEPT EARLY RETIREMENT PACKAGES

On August 1, 2007, a New Jersey Appellate Court declared N.J.A.C. 12:17-9.6(a) invalid. *In re Adoption of N.J.A.C. 12:17-9.6*, 395 N.J. Super. 394 (2007). This regulation – adopted by the New Jersey Department of Labor and effective in July 2003 – permitted all employees who had accepted voluntary early retirement packages (in order to allow another employee to remain employed) to receive unemployment benefits despite having resigned. In rejecting the regulation, the court found that it conflicts with the language of the New Jersey Unemployment Compensation Act (the “Act”) and, likewise, is inconsistent with the legislative policies underlying the Act.

The appellate panel also found that the regulation conflicted with a test established by the New Jersey Supreme Court in *Brady v. Bd. Of Review*, 152 N.J. 197 (1997). *Brady* held that a former employee ordinarily is disqualified from receiving unemployment benefits if he or she has voluntarily accepted

an early retirement package that is prompted by the employer’s need to reduce its workforce. However, *Brady* created a narrow exception for an employee who resigns because of fear that his job is in imminent jeopardy through no fault of his own *and* under circumstances in which he would suffer “substantial economic loss” if he did not take the early retirement package. The Department of Labor’s challenged regulation removed the narrow exception to unemployment benefit disqualification for accepting early retirement that *Brady* established – an act the Appellate Court declared to be beyond the authority of the administrative agency.

**Impact of the Court’s Decision**

The invalidation of N.J.A.C. 12:17-9.6(a) does not necessarily mean that voluntary retirees are barred from collecting unemployment benefits altogether. Rather, the law now reverts to the pre-regulation standard, which directs that an employee is disqualified from receiving unemployment benefits when he or she

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voluntarily accepts an early retirement package in the context of an impending reduction in force, *unless* the employee: 1) fears that his own job is in imminent jeopardy for reasons excluding his own fault; *and* 2) where the employee would suffer “substantial economic loss” if he or she did not accept the early retirement package.

Moreover, employers that offer voluntary early retirement options immediately preceding a contemplated workforce reduction should consider the following:

- Employees who accept voluntary early retirement might expect their employer also to cover the amount of their lost unemployment benefits;
- Employers who offer voluntary early retirement might experience a decline in their contribution rates for unemployment insurance as fewer claims are approved;
- An employer’s failure to clearly document that its employee is being asked to consider an early retirement option even though his specific job is not in jeopardy could lead to a post-resignation finding that the employee is ineligible for unemployment benefits and frustrate the parties’ intent that those benefits be awarded.◆

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