



# EMPLOYMENT LAW ALERT

August 2007

www.sternslaw.com

## **Unemployment Compensation Benefits No Longer Available for Employees who Voluntarily Leave Their Employment to Participate in Buyout Plans**

By Karen A. Confoy, Esq. and Erica S. Helms, Esq.

On August 1, 2007, the Superior Court of New Jersey, Appellate Division, invalidated a New Jersey Department of Labor (DOL)<sup>1</sup> regulation, which had provided that employees who voluntarily leave their employment to participate in “a written voluntary layoff and/or early retirement incentive policy or program” were also qualified to receive unemployment compensation benefits.<sup>2</sup> The Appellate Division found that the regulation contravened the Legislative policies underlying the Unemployment Compensation Act (Act), and was inconsistent with the Supreme Court’s interpretation of the Act.

Following the DOL’s adoption of *N.J.A.C. 12:17-9.6* in 2003, Verizon challenged the validity of the regulation, contending that the regulation contradicted legislative policy that unless an employee is “involuntarily” terminated from employment, the employee is disqualified from receiving unemployment compensation benefits. In other words, Verizon argued that an employee cannot be qualified to receive unemployment compensation benefits if he or she chooses to resign from employment in order to accept lucrative early retirement or separation packages, rather than because he or she is threatened with an imminent loss of employment. Verizon also maintained that the challenged regulation was inconsistent with the New Jersey Supreme Court’s two-part test for determining whether an unemployment applicant, who voluntarily accepted a retirement incentive package, has demonstrated that he or she left work voluntarily with “good cause” as required *N.J.S.A. 43:21-5(c)*<sup>3</sup> to qualify for unemployment benefits.<sup>4</sup>

Acknowledging that substantial deference is generally given to regulations adopted by administrative agencies, the Appellate Division nevertheless found that the challenged regulation was “inconsistent with and plainly transgresses the Act.” The court emphasized that unemployment compensation is not an entitlement, but an insurance program “designed to provide a cushion for workers who are involuntarily unemployed through no fault or act of their own.”

Employers who offer early retirement packages should experience some financial relief as a result of the Appellate Division’s invalidation of this regulation, because an employer’s contribution rate to the unemployment trust fund is determined in part by the amount of the unemployment benefits that are charged against an employer.

If you would like more information concerning the recent amendments to the Unemployment Compensation Act, or have any other questions about this Employment Law Alert, please contact Karen A. Confoy at 609.989.5012 or [kconfoy@sternslaw.com](mailto:kconfoy@sternslaw.com), or Erica S. Helms at 609.989.5062 or [ehelms@sternslaw.com](mailto:ehelms@sternslaw.com).

<sup>1</sup> The DOL is now the Department of Labor and Workforce Development

<sup>2</sup> See *In re Adoption of N.J.A.C. 12:17-9.6*, 2007 N.J. Super. LEXIS 278 (App. Div. Aug. 1, 2007).

<sup>3</sup> *N.J.S.A. 43:21-5(c)* provides that an individual shall be disqualified from the receipt of unemployment compensation benefits “for the week in which the individual has left work voluntarily without good cause attributable to such work.”

<sup>4</sup> *Brady v. Board of Review*, 152 N.J. 197 (1997).