

STATE OF NEW YORK

7959

2021-2022 Regular Sessions

IN ASSEMBLY

June 3, 2021

Introduced by M. of A. STIRPE -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to the calculation of weekly employment insurance benefits for certain workers; to amend a chapter of the laws of 2021 amending the labor law relating to the calculation of weekly employment insurance benefits for workers who are partially unemployed, as proposed in legislative bills numbers S. 1042-A and A. 2355-A, in relation to the effectiveness thereof; and to repeal certain provisions of the labor law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 524 of the labor law, as added by chapter 5 of the
2 laws of 2000, is amended to read as follows:

3 § 524. Week of employment. For purposes of this article, "week of
4 employment" shall mean a Monday through Sunday period during which a
5 claimant was paid remuneration for employment for an employer or employ-
6 ers liable for contributions or for payments in lieu of contributions
7 under this article. A claimant who is employed on a shift continuing
8 through midnight is deemed to have been employed on the day beginning
9 before midnight with respect to such shift, except where night shift
10 employees are regularly scheduled to start their work week at seven post
11 meridiem or thereafter on Sunday night, their regularly scheduled start-
12 ing time on Sunday shall be considered as starting on Monday.

13 § 2. Subparagraph 2 of paragraph (e) of subdivision 1 of section 581
14 of the labor law, as amended by a chapter of the laws of 2021 amending
15 the labor law relating to the calculation of weekly employment insurance
16 benefits for workers who are partially unemployed, as proposed in legis-
17 lative bills numbers S. 1042-A and A. 2355-A, is amended to read as
18 follows:

19 (2) Benefits payable to any claimant with respect to the claimant's
20 then current benefit year shall be charged, when paid, to the account of

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 the last employer prior to the filing of a valid original claim in an
2 amount equal to seven times the claimant's benefit rate. Thereafter,
3 such charges shall be made to the account of each employer in the base
4 period used to establish the valid original claim in the same proportion
5 that the remuneration paid by each employer to the claimant during that
6 base period bears to the remuneration paid by all employers to the
7 claimant during that base period except as provided below:

8 (i) In those instances where the claimant may not utilize wages paid
9 to establish entitlement based upon subdivision ten of section five
10 hundred ninety of this article and an educational institution is the
11 claimant's last employer prior to the filing of the claim for benefits,
12 or the claimant performed services in such educational institution in
13 such capacity while employed by an educational service agency which is
14 the claimant's last employer prior to the filing of the claim for bene-
15 fits, such employer shall not be liable for benefit charges [~~for the~~
16 ~~first seven effective weeks of benefits paid~~] in an amount equal to the
17 benefit paid for seven weeks of total employment as otherwise provided
18 by this section. Under such circumstances, benefits paid shall be
19 charged to the general account. In addition, wages paid during the base
20 period by such educational institutions, or for services in such educa-
21 tional institutions for claimants employed by an educational service
22 agency shall not be considered base period wages during periods that
23 such wages may not be used to gain entitlement to benefits pursuant to
24 subdivision ten of section five hundred ninety of this article.

25 (ii) In those instances where the claimant may not utilize wages paid
26 to establish entitlement based upon subdivision eleven of section five
27 hundred ninety of this article and an educational institution is the
28 claimant's last employer prior to the filing of the claim for benefits,
29 or the claimant performed services in such educational institution in
30 such capacity while employed by an educational service agency which is
31 the claimant's last employer prior to the filing of the claim for bene-
32 fits, such employer shall not be liable for benefit charges [~~for the~~
33 ~~first seven effective weeks of benefits paid~~] in an amount equal to the
34 benefit paid for seven weeks of total employment as otherwise provided
35 by this section. Under such circumstances, benefits paid will be charged
36 to the general account. In addition, wages paid during the base period
37 by such educational institutions, or for services in such educational
38 institutions for claimants employed by an educational service agency
39 shall not be considered base period wages during periods that such wages
40 may not be used to gain entitlement to benefits pursuant to subdivision
41 eleven of section five hundred ninety of this article. However, in those
42 instances where a claimant was not afforded an opportunity to perform
43 services for the educational institution for the next academic year or
44 term after reasonable assurance was provided, such employer shall be
45 liable for benefit charges as provided for in this paragraph for any
46 retroactive payments made to the claimant.

47 (iii) In those instances where the federal government is the claim-
48 ant's last employer prior to the filing of the claim for benefits and
49 such employer is not a base-period employer, payments equaling [~~the~~
50 ~~first seven effective weeks of benefits~~] an amount equal to the benefit
51 paid for seven weeks of total employment as otherwise prescribed by this
52 section shall be charged to the general account. In those instances
53 where the federal government is the claimant's last employer prior to
54 the filing of the claim for benefits and a base-period employer, such
55 employer shall be liable for charges for all benefits paid on such claim
56 in the same proportion that the remuneration paid by such employer

1 during the base period bears to the remuneration paid by all employers
2 during the base period. In addition, benefit payment charges [~~for the~~
3 ~~first seven effective weeks of benefits~~] in an amount equal to the bene-
4 fit paid for seven weeks of total employment other than those chargeable
5 to the federal government as prescribed above shall be made to the
6 general account.

7 (iv) In those instances where a combined wage claim is filed pursuant
8 to interstate reciprocal agreements and the claimant's last employer
9 prior to the filing of the claim is an out-of-state employer and such
10 employer is not a base-period employer, benefit payments [~~equaling the~~
11 ~~first seven effective weeks of benefits~~] in an amount equal to the bene-
12 fit paid for seven weeks of total employment as otherwise prescribed by
13 this section shall be charged to the general account. In those instances
14 where the out-of-state employer is the last employer prior to the filing
15 of the claim for benefits and a base-period employer such employer shall
16 be liable for charges for all benefits paid on such claim in the same
17 proportion that the remuneration paid by such employer during the base
18 period bears to the remuneration paid by all employers during the base
19 period. In addition, benefit payment charges [~~for the seven effective~~
20 ~~weeks of benefits~~] in an amount equal to the benefit paid for seven
21 weeks of total employment other than those chargeable to the out-of-
22 state employer as prescribed above shall be made to the general account.

23 (v) In those instances where the last employer prior to the filing of
24 a valid original claim has paid total remuneration to the claimant
25 during the period from the start of the base period used to establish
26 the benefit claim until the date of the claimant's filing of the valid
27 original claim in an amount less than or equal to six times the claim-
28 ant's benefit rate and the last employer has substantiated such amount
29 to the satisfaction of the commissioner within ten days of the commis-
30 sioner's original notice of potential charges to such last employer's
31 account, benefits shall be charged as follows: benefits payable to the
32 claimant with respect to the claimant's then current benefit year shall
33 be charged, when paid, to the account of such last employer prior to the
34 filing of a valid original claim in an amount equal to the lowest whole
35 number (one, two, three, four, five, or six) times the claimant's bene-
36 fit rate where the product of such lowest whole number times the claim-
37 ant's benefit rate is equal to or greater than such total remuneration
38 paid by such last employer to the claimant. Thereafter, such charges
39 shall be made to the account of each employer in the base period used to
40 establish the valid original claim in the same proportion that the
41 remuneration paid by each employer to the claimant during that base
42 period bears to the remuneration paid by all employers to the claimant
43 during that base period. Notice of such recalculation of potential
44 charges shall be given to the last employer and each employer of the
45 claimant in the base period used to establish the valid original claim.

46 § 3. Paragraph (d) of subdivision 5 of section 590 of the labor law is
47 REPEALED.

48 § 4. Subdivision 1 of section 591 of the labor law, as amended by
49 section 12 of a chapter of the laws of 2021 amending the labor law
50 relating to the calculation of weekly employment insurance benefits for
51 workers who are partially unemployed, as proposed in legislative bills
52 numbers S. 1042-A and A. 2355-A, is amended to read as follows:

53 1. Unemployment. Benefits, except as provided in section five hundred
54 ninety-one-a of this title, shall be paid only to a claimant who is
55 totally unemployed or partially unemployed [~~and who is unable to engage~~
56 ~~in his usual employment or in any other for which he is reasonably~~

1 ~~fitted by training and experience~~]. A claimant who is receiving benefits
2 under this article shall not be denied such benefits pursuant to this
3 subdivision or to subdivision two of this section because of such claim-
4 ant's service on a grand or petit jury of any state or of the United
5 States.

6 § 5. Subdivision 1 of section 591 of the labor law, as amended by
7 section 13 of a chapter of the laws of 2021 amending the labor law
8 relating to the calculation of weekly employment insurance benefits for
9 workers who are partially unemployed, as proposed in legislative bills
10 numbers S. 1042-A and A. 2355-A, is amended to read as follows:

11 1. Unemployment. Benefits shall be paid only to a claimant who is
12 totally unemployed or partially unemployed [~~and who is unable to engage~~
13 ~~in his usual employment or in any other for which he is reasonably~~
14 ~~fitted by training and experience~~]. A claimant who is receiving benefits
15 under this article shall not be denied such benefits pursuant to this
16 subdivision or to subdivision two of this section because of such claim-
17 ant's service on a grand or petit jury of any state or of the United
18 States.

19 § 6. Paragraph (a) of subdivision 3 of section 591 of the labor law,
20 as added by a chapter of the laws of 2021 amending the labor law relat-
21 ing to the calculation of weekly employment insurance benefits for work-
22 ers who are partially unemployed, as proposed in legislative bills
23 numbers S. 1042-A and A. 2355-A, is amended to read as follows:

24 (a) Compensation paid to a claimant for any day during a paid vacation
25 period, or for a paid holiday, shall be considered compensation from
26 employment and shall be included in the calculation of a claimant's
27 benefit for partial unemployment as set forth in subdivision five of
28 section five hundred ninety of this article.

29 § 7. Paragraph (a) of subdivision 6 of section 591 of the labor law,
30 as added by section 13 of part 0 of chapter 57 of laws of 2013, is
31 amended to read as follows:

32 (a) No benefits shall be payable to a claimant for any week during a
33 dismissal period for which a claimant receives dismissal pay[, ~~nor shall~~
34 ~~any day within such week be considered a day of total unemployment under~~
35 ~~section five hundred twenty-two of this article,~~] if such weekly
36 dismissal pay exceeds the claimant's maximum weekly benefit rate plus
37 the claimant's partial benefit credit.

38 § 8. Subparagraph (i) of paragraph (b) of subdivision 2 of section
39 591-a of the labor law, as amended by a chapter of the laws of 2021
40 amending the labor law relating to the calculation of weekly employment
41 insurance benefits for workers who are partially unemployed, as
42 proposed in legislative bills numbers S. 1042-A and A. 2355-A, is
43 amended to read as follows:

44 (i) requirements relating to total unemployment [~~and partial unemploy-~~
45 ~~ment~~], as defined in section five hundred twenty-two of this article,
46 availability for work and search for work, as set forth in subdivision
47 two of section five hundred ninety-one of this title and refusal to
48 accept work, as set forth in subdivision two of section five hundred
49 ninety-three of this title, are not applicable to such individuals;

50 § 9. Subparagraph (ii) of paragraph (b) of subdivision 2 of section
51 591-a of the labor law, as added by chapter 413 of the laws of 2003, is
52 amended to read as follows:

53 (ii) requirements relating to disqualifying income, as set forth in
54 [~~section~~ sections five hundred [~~twenty-three~~ twenty-five and five
55 hundred ninety of this article, are not applicable to income earned from
56 self-employment entered into by such individuals as a result of their

1 participation in self-employment assistance programs as defined in this
2 section; and

3 § 10. Subdivision 1 of section 596 of the labor law, as amended by a
4 chapter of the laws of 2021 amending the labor law relating to the
5 calculation of weekly employment insurance benefits for workers who
6 are partially unemployed, as proposed in legislative bills numbers S.
7 1042-A and A. 2355-A, is amended to read as follows:

8 1. Claim filing and certification to unemployment. A claimant shall
9 file a claim for benefits [~~at the local state employment office serving~~
10 ~~the area in which he was last employed or in which he resides within~~
11 ~~such time and~~] in such manner as the commissioner shall prescribe. [~~He~~
12 The claimant shall disclose whether he or she owes child support obli-
13 gations, as hereafter defined. If a claimant making such disclosure is
14 eligible for benefits, the commissioner shall notify the state or local
15 child support enforcement agency, as hereafter defined, that the claim-
16 ant is eligible.

17 A claimant shall correctly report any weeks of employment and any
18 compensation [~~he~~] received for such employment, including [~~employments~~
19 employment not subject to this article, and the weeks during which he or
20 she was totally unemployed or partially unemployed and shall make such
21 reports in accordance with such regulations as the commissioner shall
22 prescribe.

23 § 11. Subdivision 4 of section 596 of the labor law, as amended by a
24 chapter of the laws of 2021 amending the labor law relating to the
25 calculation of weekly employment insurance benefits for workers who
26 are partially unemployed, as proposed in legislative bills numbers S.
27 1042-A and A. 2355-A, is amended to read as follows:

28 4. Registration and reporting for work. A claimant shall register as
29 totally unemployed or partially unemployed [~~at a local state employment~~
30 ~~office serving the area in which he was last employed or in which he~~
31 ~~resides~~] with the department in accordance with such regulations as the
32 commissioner shall prescribe. After so registering, such claimant shall
33 report for work at the same local state employment office or otherwise
34 give notice of [~~the continuance of his~~] continued total or partial unem-
35 ployment as often and in such manner as the commissioner shall
36 prescribe.

37 § 12. Paragraph (a) of subdivision 2 of section 599 of the labor law,
38 as amended by a chapter of the laws of 2021 amending the labor law
39 relating to the calculation of weekly employment insurance benefits for
40 workers who are partially unemployed, as proposed in legislative
41 bills numbers S. 1042-A and A. 2355-A, is amended to read as follows:

42 (a) Notwithstanding any other provision of this chapter, a claimant
43 attending an approved training course or program under this section may
44 receive additional benefits of up to twenty-six [~~effective weeks~~] times
45 his or her weekly benefit amount following exhaustion of regular and, if
46 in effect, any other extended benefits, provided that entitlement to a
47 new benefit claim cannot be established. Certification of continued
48 satisfactory participation and progress in such training course or
49 program must be submitted to the commissioner prior to the payment of
50 any such benefits. The [~~duration~~] amount of such additional benefits
51 shall in no case exceed twice the [~~number of effective weeks~~] amount of
52 regular benefits to which the claimant is entitled at the time the
53 claimant is accepted in, or demonstrates application for appropriate
54 training.

55 § 13. Paragraphs (b) and (c) of subdivision 3 of section 601 of the
56 labor law, as amended by a chapter of the laws of 2021 amending the

labor law relating to the calculation of weekly employment insurance benefits for workers who are partially unemployed, as proposed in legislative bills numbers S. 1042-A and A. 2355-A, is amended to read as follows:

(b) for not more than [~~thirteen effective weeks with respect to his or her applicable benefit year, with a total maximum amount equal to~~] fifty percentum of the total maximum amount of regular benefits payable in such benefit year, and

(c) if a claimant's benefit year ends within an extended benefit period, the remaining balance of extended benefits to which he or she would be entitled, if any, shall be reduced by the [~~number of effective weeks~~] amount of benefits for which he or she was entitled to receive trade readjustment allowances under the federal trade act of nineteen hundred seventy-four during such benefit year, and

§ 14. A chapter of the laws of 2021 amending the labor law relating to the calculation of weekly employment insurance benefits for workers who are partially unemployed, as proposed in legislative bills numbers S. 1042-A and A. 2355-A, is amended by adding two new sections 31 and 32 to read as follows:

§ 31. Notwithstanding any other provision of law to the contrary, unemployment benefits payable pursuant to article 18 of the labor law shall be payable in cases of partial work in the following manner:

1. Days of total unemployment.

(a) For the purpose of calculating the number of effective days in a week to determine a claimant's weekly benefit entitlement in accordance with labor law section 590, a claimant shall experience a "day of total unemployment" or "full day of total unemployment" on each day that is not a day of employment.

(b) The total number of "day(s) of employment" in a week shall be calculated by adding the total number of hours worked in a week of employment, provided however that no hours in excess of 10 hours are included per calendar day, dividing the total number of hours by 10, and rounding up to the nearest whole number. If the total number of hours worked in a week is less than or equal to 10 hours, no day of employment shall have occurred. A claimant who works an amount greater than 10 hours but not more than 16 hours in a week shall be deemed to have engaged in one day of employment. A claimant who works an amount greater than 16 hours but not more than 21 hours in a week shall be deemed to have engaged in two days of employment. A claimant who works an amount greater than 21 hours but not more than 30 hours in a week shall be deemed to have engaged in three days of employment. A claimant who works an amount greater than 30 hours in a week shall be deemed to have engaged in four days of employment.

(c) A claimant who is employed on a shift continuing through midnight is deemed to have been employed on the day beginning before midnight with respect to such shift, except where night shift employees are regularly scheduled to start their work week at seven post meridiem or thereafter on a Sunday night, their regularly scheduled starting time on Sunday shall be considered as starting on Monday.

§ 32. Severability. If any amendment contained in a clause, sentence, paragraph, section or part of this act shall be adjudged by the United States Department of Labor to violate requirements for maintaining benefit standards required of the state in order to be eligible for any financial benefit offered through federal law or regulation, such amendments shall be severed from this act and shall not affect, impair or invalidate the remainder thereof.

1 § 15. Section 31 of a chapter of the laws of 2021 amending the labor
2 law relating to the calculation of weekly employment insurance benefits
3 for workers who are partially unemployed, as proposed in legislative
4 bills numbers S. 1042-A and A. 2355-A, is amended to read as follows:

5 § ~~[31.]~~ 33. This act shall take effect on the thirtieth day after it
6 shall have become a law; provided, however, that sections one through
7 thirty of this act shall take effect on April 1, 2022 or thirty days
8 after the commissioner of labor certifies that the department of labor
9 has an information technology system capable of accommodating the amend-
10 ments in this act, whichever occurs earlier; provided that section thir-
11 ty-one of this act shall take effect on the thirtieth day after it shall
12 have become a law and shall be applicable to new claims on such date and
13 thereafter and shall be deemed repealed on the same date as the remain-
14 ing provisions of this act take effect. In a manner consistent with the
15 provisions of this section, the commissioner of labor shall notify the
16 legislative bill drafting commission upon issuing his or her certif-
17 ication in order that the commission may maintain an accurate and timely
18 effective data base of the official text of the laws of the state of New
19 York in furtherance of effecting the provisions of section 44 of the
20 legislative law and section 70-b of the public officers law, and
21 provided further that the amendments to subdivision 1 of section 591 of
22 the labor law made by section twelve of this act shall be subject to the
23 expiration and reversion of such subdivision pursuant to section 10 of
24 chapter 413 of the laws of 2003, as amended, when upon such date the
25 provisions of section thirteen of this act shall take effect; provided
26 further that the amendments to section 591-a of the labor law made by
27 section fifteen of this act shall not affect the repeal of such section
28 and shall be deemed repealed therewith.

29 § 16. This act shall take effect immediately; provided that sections
30 one through fourteen of this act shall take effect on the same date and
31 in the same manner as a chapter of the laws of 2021 amending the labor
32 law relating to the calculation of weekly employment insurance benefits
33 for workers who are partially unemployed, as proposed in legislative
34 bills numbers S. 1042-A and A. 2355-A, takes effect; provided, however,
35 that the amendments to subdivision 1 of section 591 of the labor law
36 made by section four of this act shall be subject to the expiration and
37 reversion of such subdivision pursuant to section 10 of chapter 413 of
38 the laws of 2003, as amended, when upon such date the provisions of
39 section five of this act shall take effect; and provided, further, that
40 the amendments to section 591-a of the labor law made by sections eight
41 and nine of this act shall not affect the expiration and repeal of such
42 section and shall expire and be deemed repealed therewith.