

STATE OF NEW YORK

5250

2021-2022 Regular Sessions

IN SENATE

February 26, 2021

Introduced by Sen. MAYER -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to establishing the excluded workers fund to provide payments to workers who suffered a loss of work-related earnings or a major source of household income during a state of emergency declared by the governor and who are otherwise ineligible for unemployment insurance

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

1 Section 1. Section 201 of the workers' compensation law is amended by
2 adding a new subdivision 24 to read as follows:

3 24. "Excluded worker" means an individual who is a legal resident of
4 New York state, a permanent lawful resident of New York state, a lawful
5 non-immigrant alien or an individual without lawful immigration status
6 whose principal place of residence is in New York state, and, who:

7 (a) does not meet the eligibility requirements:

8 (i) for unemployment insurance benefits under article eighteen of the
9 labor law, including benefits payable to federal civilian employees and
10 to ex-servicemen and servicewomen pursuant to chapter 85 of the United
11 States Code, and benefits authorized to be used for the self-employment
12 assistance program pursuant to the Federal-State Extended Unemployment
13 Compensation Act of 1970;

14 (ii) for insurance or assistance payments under any programs provided
15 for by Title II of the federal CARES Act; or

16 (iii) payments under the Presidential Memorandum Authorizing the Other
17 Needs Assistance Program for Major Disaster Declarations Related to
18 Coronavirus Disease 2019, issued on August 8, 2020, and

19 (b) (i) suffered a loss:

20 (A) of work-related earnings; or

21 (B) of one or more major sources of household income due to the death
22 or disability of a close household member, on whose income the household

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

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1 depended, during a state of emergency declared by the governor, provided
2 that no other individual in the household is receiving benefits pursuant
3 to this article for the same month for the same reason. Such benefits
4 shall only be accessed during calendar quarters during which the U.S.
5 Bureau of Labor Statistics reports a seasonally adjusted unemployment
6 rate of six percent or more in the state; or

7 (ii) was released from post-arraignment incarceration or detention or
8 from immigration detention on or after October first, two thousand nine-
9 teen.

10 § 2. The workers' compensation law is amended by adding a new section
11 207-a to read as follows:

12 § 207-a. Workers excluded from unemployment insurance benefits. 1.
13 Eligibility. Excluded workers as defined in this article shall be eligi-
14 ble for benefits under this section in the same manner as if they were
15 receiving disability benefits under paragraph (b) of subdivision two of
16 section two hundred four of this article, and the weekly benefit of an
17 excluded worker shall be computed in the same manner as provided in such
18 paragraph (b), and the benefits such worker is entitled to receive shall
19 be subject to the limitations as to maximum and minimum amounts and
20 duration and other conditions and limitations prescribed in sections two
21 hundred four, two hundred five and two hundred six of this article.

22 2. Payment of benefits. (a) The benefits payable under this section
23 shall be subject to the provisions and limitations generally applicable
24 to disability benefits payable under this article, and shall be paid by
25 the chair out of any assets in the fund created by section two hundred
26 fourteen-a of this article, provided, however, that payments shall not
27 be subject to the provisions of section twelve of this chapter or para-
28 graph (a) of subdivision one of section two hundred five of this arti-
29 cle.

30 (b) Payments shall continue until the last day of any calendar quarter
31 during which the U.S. Bureau of Labor Statistics reports a seasonally
32 adjusted unemployment rate of six percent or more in the state.

33 (c) (i) Payments shall be retroactive to the first date of earnings
34 loss during the state disaster emergency declared by executive order two
35 hundred two that began on March seventh, two thousand twenty or April
36 first, two thousand twenty, whichever occurs later, and any retroactive
37 benefits accrued to any such excluded worker as of the date on which
38 such excluded worker is first paid benefits under this section by reason
39 of this subparagraph shall be paid in full on such date on which the
40 first benefit is paid; and

41 (ii) Benefits shall not be available to any excluded worker if such
42 excluded worker's gross work-related earnings received in the previous
43 calendar month exceeded two thousand one hundred eighty-two dollars.

44 (d) The chair may also by regulation establish reasonable procedures
45 for determining pro rata benefits payable with respect to periods of
46 eligibility of less than one week.

47 3. Application for benefits. (a) Notwithstanding anything in this
48 chapter to the contrary, each individual eligible for benefits pursuant
49 to subdivision one of this section shall make application to the chair
50 in such form and at such time as the chairperson may prescribe, which
51 application shall include at least two of the following:

52 (i) Primary proof of identity including, but not limited to, a driv-
53 er's license, motor vehicle identification card number, valid foreign
54 driver's license that includes a photo image of the applicant and which
55 is unexpired or expired for less than twenty-four months of its date of
56 expiration, New York State identification, IDNYC or other New York

1 municipal or county identification card, student identification card,
2 valid unexpired foreign passport issued by the applicant's country of
3 citizenship, or valid unexpired consular identification document issued
4 by a consulate from the applicant's country of citizenship. Nothing
5 contained in this subdivision shall be deemed to preclude the commis-
6 sioner from approving additional proofs of identity;

7 (ii) Social security number or, in lieu thereof, an individual taxpay-
8 er identification number or a United States citizenship and immigration
9 services number;

10 (iii) Names and addresses of all employers and/or hiring parties, in
11 and out of the state, for the last eighteen months to the extent that
12 such information is available to the applicant; or

13 (iv) Mailing address and zip code.

14 (b) Application forms prescribed by the chair shall not state (i) the
15 documents an applicant used to prove identity; (ii) an applicant's inel-
16 igibility for a social security number, where applicable; or (iii) an
17 applicant's citizenship or immigration status.

18 (c) Proof of eligibility may be established by documentation or, in
19 the absence of documentation, by self-attestation.

20 (d) Applicants shall not be required to prove that they are lawfully
21 present in the United States.

22 4. Any individual claiming benefits under this section whose claim is
23 rejected in whole or in part by the chair shall be entitled to request a
24 review of such claim. The review shall be conducted by a single arbitra-
25 tor process, pursuant to rules promulgated by the chair, and a decision
26 on review of the rejected claim shall be decided pursuant to such single
27 arbitrator process. Decisions rendered under the single arbitrator proc-
28 ess shall be conclusive upon the parties.

29 § 3. The workers' compensation law is amended by adding a new section
30 214-a to read as follows:

31 § 214-a. Special fund for excluded workers. There is hereby created a
32 fund which shall be known as the special fund for excluded workers, to
33 provide for the payment of disability benefits under section two hundred
34 seven-a of this article.

35 1. Thirty days after the effective date of this section, the chair
36 shall assess and collect an amount equal to one billion dollars. Such
37 assessment shall be in addition to the assessment rate established
38 pursuant to subdivision two of section one hundred fifty-one of this
39 chapter. Such assessment shall be deposited with the commissioner of
40 taxation and finance and transferred to the benefit of such fund upon
41 payment of debt service, if any, pursuant to section one hundred fifty-
42 one of this chapter.

43 2. Whenever the net assets of the fund shall be less than fifty
44 million dollars and the claims currently being paid shall indicate the
45 necessity of supplementing the assets of the fund the chair may transfer
46 from monies collected pursuant to subdivision two of section one hundred
47 fifty-one of this chapter an amount sufficient in the discretion of the
48 chair for the needs of the fund, but not in excess of an amount suffi-
49 cient to restore the fund to fifty million dollars.

50 3. All contributions and assessments received by the chair under the
51 provisions of this section shall be credited to the fund herein estab-
52 lished and deposited by the chair to the credit of the commissioner of
53 taxation and finance for the benefit of the fund. The superintendent of
54 financial services may examine into the condition of the fund at any
55 time on his own initiative or upon the request of the chair.

1 4. Moneys of the fund shall not be used in whole or in part for any
2 purpose or in any manner which (a) would permit its substitution for, or
3 a corresponding reduction in, federal funds that would be available in
4 its absence to finance expenditures for the administration of this arti-
5 cle; or (b) would cause the appropriate agency of the United States
6 government to withhold any part of an administrative grant which would
7 otherwise be made.

8 § 4. Subdivisions 1, 2 and 3 of section 151 of the workers' compen-
9 sation law, subdivisions 1 and 2 as added by section 22 of part GG of
10 chapter 57 of the laws of 2013, subdivision 3 as amended by section 1 of
11 subpart J of part NNN of chapter 59 of the laws of 2017, are amended to
12 read as follows:

13 1. The annual expenses necessary for the board to administer the
14 provisions of this chapter, the volunteer ambulance workers' benefit
15 law, the volunteer firefighters' benefit law, the disability benefits
16 law, and the workmen's compensation act for civil defense volunteers
17 shall be borne by affected employers securing compensation for their
18 employees pursuant to section fifty of this chapter. The board shall
19 collect such annual expenses from affected employers through assessments
20 as provided by the provisions of this section, including for purposes of
21 this subdivision: (a) the aggregate assessment amount described in
22 subparagraph four of paragraph (h) of subdivision eight of section
23 fifteen of this chapter for the special disability fund in accordance
24 with each financing agreement described in such subparagraph, (b) the
25 aggregate assessment amount described in section fifty-c of this chapter
26 for the self-insurer offset fund in accordance with each financing
27 agreement described in such section, (c) the assessment amount described
28 in subdivision three of section twenty-five-a of this chapter for the
29 fund for reopened cases [~~and~~], (d) the assessment amount described in
30 section two hundred fourteen of this chapter for the special fund for
31 disability benefits, and (e) the assessment amount described in section
32 two hundred fourteen-a of this chapter for the special fund for excluded
33 workers; provided, that the foregoing and any other provision of this
34 chapter to the contrary notwithstanding, assessment receipts shall be
35 applied first to fully fund the amount described in subparagraph four of
36 paragraph (h) of subdivision eight of section fifteen of this chapter
37 and then to fully fund the amount described in section fifty-c of this
38 chapter in accordance with each then applicable financing agreement
39 pursuant to such provisions prior to application to any other purpose
40 other than to pay any actual costs of collecting such assessment that
41 are not otherwise funded. For purposes of this section, affected employ-
42 er means all employers required to obtain workers' compensation coverage
43 pursuant to this chapter.

44 2. On the first day of November, two thousand thirteen, and annually
45 thereafter, the chair shall establish an assessment rate for all
46 affected employers in the state of New York in an amount expected to be
47 sufficient to produce assessment receipts at least sufficient to fund
48 all estimated annual expenses pursuant to subdivision one of this
49 section except those expenses for which an assessment is authorized for
50 self-insurance pursuant to subdivision five of section fifty of this
51 chapter. Such rate shall be assessed effective the first of January of
52 the succeeding year and shall be based upon a single methodology deter-
53 mined by the chair; provided, however, that for assessments for the
54 special fund for excluded workers under section two hundred fourteen-a
55 of this chapter the chair shall establish assessment rates as follows:
56 (a) ninety percent of the total assessment shall be borne by employers

1 subject to this assessment employing five hundred or more employees, in
2 an amount per such employer equal to the aggregate amount borne by all
3 such employers multiplied by a fraction, the numerator of which is the
4 number of employees employed by such employer and the denominator of
5 which is the aggregate number of employees employed by all employers
6 employing five hundred or more employees subject to this assessment, as
7 determined by the board, (b) five percent of the total assessment shall
8 be borne by employers subject to this assessment employing more than
9 ninety-nine but fewer than five hundred employees, in an amount per such
10 employer equal to the aggregate amount borne by all such employers
11 multiplied by a fraction, the numerator of which is the number of
12 employees employed by such employer and the denominator of which is the
13 aggregate number of employees employed by all employers subject to this
14 assessment employing more than ninety-nine but fewer than five hundred
15 employees, as determined by the board, (c) two and one-half percent of
16 the total assessment shall be borne by employers subject to this assess-
17 ment employing more than ten but fewer than one hundred employees, in an
18 amount per such employer equal to the aggregate amount borne by all such
19 employers multiplied by a fraction, the numerator of which is the number
20 of employees employed by such employer and the denominator of which is
21 the aggregate number of employees employed by all employers subject to
22 this assessment employing more than ten but fewer than one hundred
23 employees, as determined by the board, and (d) two and one-half percent
24 of the total assessment shall be borne by employers subject to this
25 assessment employing fewer than ten employees, in an amount per such
26 employer equal to the aggregate amount borne by all such employers
27 multiplied by a fraction, the numerator of which is the number of
28 employees employed by such employer and the denominator of which is the
29 aggregate number of employees employed by all employers subject to this
30 assessment employing fewer than ten employees, as determined by the
31 board. The chair may also establish an additional assessment rate, not
32 to exceed thirty percent of annual premiums, for those affected employ-
33 ers who are in default in the payment of their compensation pursuant to
34 subparagraph (b) of paragraph seven of subdivision three-a of section
35 ~~50~~ **fifty** of this chapter. Such additional assessment shall be
36 collected and remitted to the chair consistent with subdivisions four
37 and five of this section. The chair shall make available for public
38 inspection an itemized statement of the estimated annual expenses in the
39 office of the board for thirty days immediately after the rate is estab-
40 lished.

41 3. The chair and department of audit and control annually as soon as
42 practicable after the first of April of each year shall ascertain the
43 actual total amount of expenses, including in addition to the direct
44 costs of personal service, the cost of maintenance and operation, the
45 cost of retirement contributions made and workers' compensation premiums
46 paid by the state for or on account of personnel, rentals for space
47 occupied in state owned or state leased buildings, such additional sum
48 as may be certified to the chair and the department of audit and control
49 as a reasonable compensation for services rendered by the department of
50 law and expenses incurred by such department, for transfer into the
51 training and educational program on occupational safety and health fund
52 created pursuant to chapter eight hundred eighty-six of the laws of
53 nineteen hundred eighty-five and section ninety-seven-c of the state
54 finance law, for the New York state occupational health clinics network,
55 for the department of labor occupational safety and health program and
56 for transfer into the uninsured employers' fund pursuant to subdivision

two of section twenty-six-a of this chapter, and all other direct or indirect costs, incurred by the board in connection with the administration of this chapter, except those expenses for which an assessment is authorized for self-insurance pursuant to subdivision five of section fifty of this chapter. Assessments pursuant to subparagraph four of paragraph (h) of subdivision eight of section fifteen of this chapter for the special disability fund, pursuant to section fifty-c of this chapter for the self insurer offset fund, pursuant to subdivision three of section twenty-five-a of this chapter for the fund for reopened cases, ~~and~~ pursuant to section two hundred fourteen of this chapter for the special fund for disability benefits, and pursuant to section two hundred fourteen-a of this chapter for the special fund for excluded workers, shall be included in the total amount of expenses for the purposes of this subdivision. Any overpayment of annual assessments resulting from the requirements of this subdivision shall be applied as a credit against the future assessment rate provided the fund balance shall not be reduced below five percent of the total amount assessed.

§ 5. The workers' compensation law is amended by adding a new section 110-aa to read as follows:

§ 110-aa. Confidentiality of excluded workers' records. 1. Restrictions on disclosure. (a) Except where necessary to comply with a lawful court order, judicial warrant signed by a judge appointed pursuant to article III of the United States constitution, or subpoena for individual records issued pursuant to the criminal procedure law or the civil practice law and rules, or in accordance with subdivision two or three of this section, no record or portion thereof relating to a claimant or worker who has filed a claim for benefits pursuant to section two hundred seven-a of this chapter is a public record and no such record shall be disclosed, redisclosed, released, disseminated or otherwise published or made available.

(b) For purposes of this section:

(i) "record" means a claim file, a file regarding a complaint or circumstances for which no claim has been made, and/or any records maintained by the board in electronic databases in which individual claimants or workers are identifiable, or any other information relating to any person who has heretofore or hereafter filed a claim for benefits pursuant to section two hundred seven-a of this chapter, including a copy or oral description of a record which is or was in the possession or custody of the board, its officers, members, employees or agents.

(ii) "person" means any natural person, corporation, association, partnership, or other public or private entity.

(iii) "individually identifiable information" means any data concerning any claim or potential claim that is linked to an identifiable worker or other natural person, including but not limited to a photo image, social security number or tax identification number, telephone number, place of birth, country of origin, place of employment, school or educational institution attended, source of income, status as a recipient of public benefits, a customer identification number associated with a public utilities account, or medical or disability information.

2. Authorized disclosure. Records which contain individually identifiable information may, unless otherwise prohibited by law, be disclosed to:

(a) those officers, members and employees of the board if such disclosure is necessary to the performance of their official duties pursuant to a purpose of the board required to be accomplished by statute or executive order or otherwise necessary to act upon an application for

1 benefits submitted by the person who is the subject of the particular
2 record;

3 (b) officers or employees of another governmental unit, or agents
4 and/or contractors of the governmental unit at the request and/or direc-
5 tion of the governmental unit, if the information sought to be disclosed
6 is necessary to act upon an application for benefits submitted by the
7 person who is the subject of the particular record;

8 (c) a judicial or administrative officer or employee in connection
9 with an administrative or judicial proceeding if the information sought
10 to be disclosed is necessary to act upon an application for benefits
11 submitted by the person who is the subject of the particular record; and

12 (d) a person engaged in bona fide statistical research, including but
13 not limited to actuarial studies and health and safety investigations,
14 which are authorized by statute or regulation of the board or other
15 governmental agency. Individually identifiable information shall not be
16 disclosed unless the researcher has entered into an agreement not to
17 disclose any individually identifiable information which contains
18 restrictions no less restrictive than the restrictions set forth in this
19 section and which includes an agreement that any research findings will
20 not disclose individually identifiable information.

21 3. Individual authorization. Notwithstanding the restrictions on
22 disclosure set forth under subdivision one of this section, a person who
23 is the subject of a workers' compensation record may authorize the
24 release, re-release or publication of his or her record to a specific
25 person not otherwise authorized to receive such record, by submitting
26 written authorization for such release to the board on a form prescribed
27 by the chair or by a notarized original authorization specifically
28 directing the board to release workers' compensation records to such
29 person. However, in accordance with section one hundred twenty-five of
30 this article, no such authorization directing disclosure of records to a
31 prospective employer shall be valid; nor shall an authorization permit-
32 ting disclosure of records in connection with assessing fitness or capa-
33 bility for employment be valid, and no disclosure of records shall be
34 made pursuant thereto. It shall be unlawful for any person to consider
35 for the purpose of assessing eligibility for a benefit, or as the basis
36 for an employment-related action, an individual's failure to provide
37 authorization under this subdivision.

38 4. For the purposes of this section, whenever disclosure of records is
39 sought pursuant to a lawful court order, judicial warrant, or subpoena
40 for individual records properly issued pursuant to the criminal proce-
41 dure law or the civil practice law and rules or pursuant to subdivision
42 two or three of this section, only those records, documents, and infor-
43 mation specifically sought may be disclosed, and any such disclosure
44 shall be limited to such records as are necessary to fulfill the purpose
45 of such disclosure.

46 5. The chair shall require any person or entity that receives or has
47 access to records to certify to the chair that, before such receipt or
48 access, such person or entity shall not:

49 (a) use such records or information for civil immigration purposes; or

50 (b) disclose such records or information to any agency that primarily
51 enforces immigration law or to any employee or agent of any such agency
52 unless such disclosure is pursuant to a cooperative arrangement between
53 city, state and federal agencies which arrangement does not enforce
54 immigration law and which disclosure is limited to the specific records
55 or information being sought pursuant to such arrangement. Violation of
56 such certification shall be a class A misdemeanor. In addition to any

1 records required to be kept pursuant to subdivision (c) of section 2721
2 of title 18 of the United States code, any person or entity certifying
3 pursuant to this paragraph shall keep for a period of five years records
4 of all uses and identifying each person or entity that primarily
5 enforces immigration law that received department records or information
6 from such certifying person or entity. Such records shall be maintained
7 in a manner and form prescribed by the chair and shall be available for
8 inspection by the chair or his or her designee upon his or her request.

9 (c) For purposes of this subdivision, the term "agency that primarily
10 enforces immigration law" shall include, but not be limited to, United
11 States immigration and customs enforcement and United States customs and
12 border protection, and any successor agencies having similar duties.

13 (d) Failure to maintain records as required by this subdivision shall
14 be a class A misdemeanor.

15 6. Except as otherwise provided by this section, any person who know-
16 ingly and willfully obtains records which contain individually identifi-
17 able information under false pretenses or otherwise violates this
18 section shall be guilty of a class E felony.

19 7. In addition to or in lieu of any criminal proceeding available
20 under this section, whenever there shall be a violation of this section,
21 application may be made by the attorney general in the name of the
22 people of the state of New York to a court or justice having jurisdic-
23 tion by a special proceeding to issue an injunction, and upon notice to
24 the defendant of not less than five days, to enjoin and restrain the
25 continuance of such violations; and if it shall appear to the satisfac-
26 tion of the court or justice that the defendant has, in fact, violated
27 this section, an injunction may be issued by such court or justice,
28 enjoining and restraining any further violation, without requiring proof
29 that any person has, in fact, been injured or damaged thereby. In any
30 such proceeding, the court may make allowances to the attorney general
31 as provided in paragraph six of subdivision (a) of section eighty-three
32 hundred three of the civil practice law and rules, and direct restitu-
33 tion. Whenever the court shall determine that a violation of this
34 section has occurred, the court may impose a civil penalty of not more
35 than five hundred dollars for the first violation, and not more than one
36 thousand dollars for the second or subsequent violation within a three
37 year period. In connection with any such proposed application, the
38 attorney general is authorized to take proof and make a determination of
39 the relevant facts and to issue subpoenas in accordance with the civil
40 practice law and rules.

41 § 6. This act shall take effect immediately.