

# STATE OF NEW YORK

444

2025-2026 Regular Sessions

## IN SENATE

(Prefiled)

January 8, 2025

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

AN ACT to amend the labor law, in relation to the recovery of overpayments of unemployment benefits; to direct the department of labor to provide claimants who have previously been denied waivers with applications for individual waivers; and to repeal certain provisions of such law relating thereto

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

1 Section 1. The labor law is amended by adding a new section 594-a to  
2 read as follows:

3 § 594-a. Recovery of overpayments. (1) Definitions. For the purposes  
4 of this section:

5 (a) "Without fault" means the claimant did not, with the intent to  
6 receive benefits, intentionally supply false information or knowingly  
7 omit information, which directly resulted in the department issuing  
8 benefits to which the claimant knew they were not entitled;

9 (b) "Final determination" means thirty days after appeal rights have  
10 been exhausted or abandoned.

11 (c) "Willful misrepresentation" or "willful false statement" means an  
12 intentional, knowing, or deliberately false representation from the  
13 claimant to the department, made in order to obtain unemployment insur-  
14 ance benefits. "Knowing" for the purposes of this paragraph means having  
15 actual knowledge.

16 (2) Notwithstanding any provision of section five hundred ninety-four  
17 of this title to the contrary, any claimant who has received benefits  
18 under the provisions of this article on or after January twenty-seventh,  
19 two thousand twenty, to which they were not entitled shall not be held  
20 liable for the amounts overpaid provided that all of the following  
21 conditions exist:

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

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1 (a) Such overpayment was not due to a willful false statement or  
2 misrepresentation;

3 (b) Such overpayment was received without fault on the part of the  
4 claimant; and

5 (c) The recovery of such overpayment would be against equity and good  
6 conscience.

7 (3) When determining whether an overpayment was received without fault  
8 on the part of the claimant, the commissioner shall consider the follow-  
9 ing factors:

10 (a) The nature and cause of such overpayment and the capacity of the  
11 claimant to recognize the error resulting in such overpayment;

12 (b) Whether the claimant knew or reasonably should have known that  
13 such claimant was not lawfully entitled to receive such benefits;

14 (c) Whether the benefits were received or retained because of the  
15 claimant's good faith reliance on an administrative or departmental  
16 error; and

17 (d) Whether the claimant willfully reported or failed to report infor-  
18 mation which resulted in such overpayment.

19 (4) (a) There shall be a presumption that the claimant is without  
20 fault if:

21 (i) the department provided conflicting, changing, or confusing infor-  
22 mation or instructions;

23 (ii) the department took more than six months to implement a federal  
24 law regarding proof of eligibility from claimants;

25 (iii) the claimant was unable to reach the department despite their  
26 best efforts to inquire or clarify information the individual needed to  
27 provide due to language, education, literacy, disability or similar  
28 barriers;

29 (iv) the claimant was unable to understand the department's notices or  
30 directives due to language, education, literacy, disability or other  
31 similar barriers;

32 (v) the claimant chose a reason for separation which is legally incor-  
33 rect, though reasonable for the claimant to have selected under the  
34 circumstances; or

35 (vi) the claimant had assistance in filing a claim, certifying, or  
36 otherwise responding to the department and the claimant's assistant did  
37 not confirm required information with the claimant or misunderstood such  
38 information provided by the claimant, resulting in inaccurate informa-  
39 tion being submitted without the claimant's knowledge.

40 (b) There shall be a presumption that the payment of benefits is with-  
41 out fault if the overpayment was due to agency error or mistake or the  
42 employer provided incorrect or untimely information. Receipt or  
43 possession of the claimants' unemployment insurance handbook shall not  
44 create a presumption that the claimant was on notice of the handbook's  
45 contents nor shall receipt or possession of the handbook be used against  
46 the claimant on points of fact or law.

47 (5) Recovery of any overpayment would be against equity and good  
48 conscience if:

49 (a) recovery would cause financial hardship to the person from whom  
50 recovery is sought;

51 (b) the recipient of the overpayment can show, regardless of their  
52 financial situation, that repayment would cause them to relinquish a  
53 valuable right or change their position for the worse, including, but  
54 not limited to, signing a lease, taking out a loan, or declining other  
55 state or federal assistance in reliance on receipt of unemployment  
56 insurance benefits;

1 (c) the individual or their household receives social security income,  
2 supplemental security income, social security disability, medicaid,  
3 medicare, free or reduced public school lunch, FIP, temporary assist-  
4 ance, supplemental nutrition assistance program benefits, nutrition  
5 benefits provided as part of the special supplemental nutrition program  
6 for women, infants and children (WIC), home energy assistance program  
7 benefits, senior citizen rent increase exemption, disability rent  
8 increase exemption, rental subsidy pursuant to federal or state law, is  
9 at or below four hundred percent of the federal poverty guidelines or  
10 living in project-based subsidized housing or any substantially equiv-  
11 alent successor programs to the aforementioned benefits programs;

12 (d) the individual used the unemployment benefits to meet their ordi-  
13 nary living expenses, including, but not limited to, food, rent, medical  
14 costs or insurance, dental bills or insurance, school loans, school  
15 fees, utilities, child care, mortgage payments, transportation, purchase  
16 or maintenance of a car or equipment needed for employment or self-em-  
17 ployment, or operating expenses for self-employment; or

18 (e) there is any other reason for which recovery of the overpayment  
19 would be against equity and good conscience under the circumstances.

20 (6) (a) In the event that a new determination by the commissioner or a  
21 decision by a referee, the appeal board, or a court results in a  
22 decrease or denial of any benefits previously allowed, or at any other  
23 time it has been determined that an overpayment has occurred, the claim-  
24 ant shall be notified in writing, by mail or electronically, within  
25 fifteen days of such determination or decision of such claimant's right  
26 to appeal such determination or decision and to request a waiver of  
27 recovery of such overpayment. Such notice shall include, but shall not  
28 be limited to:

29 (i) The total amount of such overpayment and the cause of such over-  
30 payment;

31 (ii) The schedule of repayment for such amounts overpaid;

32 (iii) The means by which the commissioner is entitled to collect or  
33 recover such overpayment;

34 (iv) An explanation of the claimant's right to appeal such determi-  
35 nation or decision in accordance with the provisions of this article and  
36 any rules and regulations promulgated thereunder;

37 (v) An explanation of the standards by which a claimant shall not be  
38 found liable for the amounts overpaid, as set forth in this section;

39 (vi) The process by which the claimant may request and obtain a waiver  
40 of recovery of such overpayment, including a copy of the waiver applica-  
41 tion; and

42 (vii) the amount that is waived and the reason why any or all of the  
43 overpayment was not waived.

44 (b) The commissioner shall review each waiver request in a manner  
45 consistent with this section to determine whether the claimant shall be  
46 held liable for any amounts overpaid. Any claimant who is found not to  
47 be liable for any amounts overpaid shall be entitled to receive a full  
48 waiver of such overpayment and any previously imposed penalties on such  
49 overpayment must be rescinded accordingly.

50 (c) (i) Any claimant who disagrees with a determination regarding a  
51 waiver may request a hearing within sixty days of receipt of the deter-  
52 mination.

53 (ii) Claimants shall have all appeals rights as provided under title  
54 eight of this article, except that referees may extend the time fixed  
55 for requesting a hearing upon good cause shown.

1 (iii) When a determination is made that the claimant was at fault, the  
2 referee and unemployment insurance appeals board shall review the deter-  
3 mination of fault and any willful misrepresentations de novo.

4 (d) The department shall within thirty days of the effective date of  
5 this section develop and implement a process by which claimants may  
6 request and obtain an individual waiver application by phone, fax, mail,  
7 and through the department's two-way communication system. The applica-  
8 tion shall be made available to all claimants without regard to a deter-  
9 mination of fault or willfulness in the receipt of the claimant's over-  
10 payment.

11 (e) All notifications shall be translated into the twelve most common-  
12 ly spoken languages in the state.

13 (f) Any funds recouped or repaid prior to the granting of a waiver  
14 under this section shall be returned to the claimant as provided under  
15 subdivision five of this section.

16 (7) (a) Upon the denial of any waiver request, or upon any other  
17 determination by the commissioner or a decision by a referee, the appeal  
18 board, or a court that a claimant shall be held liable for any overpay-  
19 ment, the claimant shall be notified in writing, by mail or electron-  
20 ically, within fifteen days of such determination or decision. Such  
21 notice shall set forth the reason for such denial, if applicable, and  
22 such claimant's right to request an adjustment to such claimant's repay-  
23 ment schedule.

24 (b) Where a waiver is denied, the claimant shall be offered a repay-  
25 ment plan to pay down the amount owed over a period of time no less than  
26 three years. The repayment plan shall be based on the claimant's ability  
27 to repay. After such three year repayment period, the department shall  
28 write off any further overpayment debt remaining on the claim. Nothing  
29 in this section shall impede the ability of the department to discharge  
30 or waive any overpayment.

31 (c) The commissioner shall grant an adjustment to the claimant's  
32 repayment schedule if at any time the claimant is able to demonstrate  
33 that there has been a change in such claimant's financial condition  
34 which warrants such adjustment. The department shall notify claimants  
35 of the ability to seek a modified repayment plan in writing upon the  
36 claimant's entry into a repayment plan.

37 § 2. Subdivision 4 of section 597 of the labor law is REPEALED.

38 § 3. Paragraph (c) of subdivision 1 of section 600 of the labor law,  
39 as amended by section 19 of part 0 of chapter 57 of the laws of 2013, is  
40 amended to read as follows:

41 (c) If, at the time benefits are payable, it has not been established  
42 that the claimant will be receiving such pension, retirement or retired  
43 pay, annuity or other payment, benefits due shall be paid without a  
44 reduction, subject to review within the period and under the conditions  
45 as provided in [~~subdivisions~~ subdivision three [~~and—four~~] of section  
46 five hundred ninety-seven with respect to retroactive payment of remun-  
47 eration.

48 § 4. Within 30 days of the effective date of this act, the Commis-  
49 sioner of Labor shall seek a review of this act by the United States  
50 Department of Labor to determine the effect of this act on the ability  
51 of New York State to receive a cap and/or waiver on the reduction of tax  
52 credits, otherwise known as the Benefit Cost Rate (BCR) penalty, pursu-  
53 ant to section 3302 of the Federal Unemployment Tax Act and 20 CFR  
54 606.20. As part of the request to review the act, the Commissioner shall  
55 ask the USDOL how the provisions of this act that allow for the waiver  
56 of the overpayments of Federal unemployment or assistance benefits,

1 alone, including Pandemic Unemployment Assistance, Pandemic Emergency  
2 Unemployment Compensation and Federal Pandemic Unemployment Compensation  
3 shall effect the ability of New York State to receive a cap and/or waiv-  
4 er on the reduction of tax credits, otherwise known as the Benefit Cost  
5 Rate (BCR) penalty, pursuant to section 3302 of the Federal Unemployment  
6 Tax Act and 20 CFR 606.20. Within one week of the receipt of the USDOL's  
7 review, the Commissioner shall certify that this act will or will not  
8 prevent a cap and/or waiver of the BCR penalty and provide such certif-  
9 ication along with a copy of the USDOL's response to a request for such  
10 review to the Assembly and Senate Labor Committee chairs. As part of  
11 this certification, the Commissioner shall state whether or not the  
12 provisions of this act that allow for the waiver of the overpayments of  
13 Federal unemployment or assistance benefits, alone, including Pandemic  
14 Unemployment Assistance, Pandemic Emergency Unemployment Compensation  
15 and Federal Pandemic Unemployment Compensation will or will not prevent  
16 a cap and/or waiver of the BCR penalty. The Commissioner shall seek such  
17 review as of January 15 of each successive year until the sooner of the  
18 Commissioner certifying that this act will not prevent a cap and/or  
19 waiver of the BCR penalty or the State unemployment insurance trust fund  
20 becomes solvent.

21 § 5. This act shall take effect immediately provided, however that  
22 sections one, two and three shall take effect upon the certification by  
23 the Commissioner of Labor that this act will not prevent a cap and/or  
24 waiver of the BCR penalty and shall be deemed to have been in full force  
25 and effect on and after March 9, 2020. If the Commissioner certifies  
26 that the provisions of this act that allow for the waiver of the over-  
27 payments of Federal unemployment or assistance benefits including  
28 Pandemic Unemployment Assistance, Pandemic Emergency Unemployment  
29 Compensation and Federal Pandemic Unemployment Compensation will not  
30 prevent a cap and/or waiver of the BCR penalty, those provisions shall  
31 take effect immediately and shall be deemed to have been in full force  
32 and effect on and after March 9, 2020. In the event that the Commission-  
33 er certifies that all provisions of this act will prevent a cap and/or  
34 waiver of the BCR penalty, the provisions of this act shall take effect  
35 upon the solvency of the State unemployment compensation trust fund and  
36 shall be deemed to have been in full force and effect on and after March  
37 9, 2020. The Commissioner of Labor shall notify the legislative bill  
38 drafting commission upon the Commissioner's certification as required by  
39 this section in order that the commission may maintain an accurate and  
40 timely effective data base of the official text of the laws of the state  
41 of New York in furtherance of effectuating the provisions of section 44  
42 of the legislative law and section 70-b of the public officers law.