S T A T E O F N E W Y O R K

8273

2009-2010 Regular Sessions

I N A S S E M B L Y

May 11, 2009

Introduced by M. of A. MENG, SILVER, JOHN -- (at request of the Governor) -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to unemployment insurance benefits and part-time work, voluntary separations from employment, and on/off indicators for extended unemployment insurance benefits; and in relation to extended benefits

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 1 of section 593 of the labor law, as amended by chapter 415 of the laws of 1983, paragraph (a) as amended by chapter 268 of the laws of 1999, and paragraph (b) as amended by chapter 589 of the laws of 1998, is amended to read as follows:

1. Voluntary separation; SEPARATION FOR A COMPELLING FAMILY REASON. (a) No days of total unemployment shall be deemed to occur after a claimant's voluntary separation without good cause from employment until he or she has subsequently worked in employment and earned remuneration at least equal to five times his or her weekly benefit rate. In addition to other circumstances that may be found to constitute good cause, INCLUDING A COMPELLING FAMILY REASON AS SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION, voluntary separation from employment shall not in itself disqualify a claimant if circumstances have developed in the course of such employment that would have justified the claimant in refusing such employment in the first instance under the terms of subdivision two of this section or if the claimant, pursuant to an option provided under a collective bargaining agreement or written employer plan which permits waiver of his right to retain the employment when there is a temporary layoff because of lack of work, has elected to be separated for a temporary period and the employer has consented thereto.

(B) A [voluntary separation may also be deemed for good cause if it occurred as a consequence of circumstances directly resulting from the claimant being a victim of domestic violence] CLAIMANT SHALL NOT BE

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

LBD12032-06-9

DISQUALIFIED FROM RECEIVING BENEFITS FOR SEPARATION FROM EMPLOYMENT DUE TO ANY COMPELLING FAMILY REASON. FOR PURPOSES OF THIS PARAGRAPH, THE TERM "COMPELLING FAMILY REASON" SHALL INCLUDE, BUT NOT BE LIMITED TO, SEPARATIONS RELATED TO ANY OF THE FOLLOWING:

(I) DOMESTIC VIOLENCE, VERIFIED BY REASONABLE AND CONFIDENTIAL DOCUMENTATION WHICH CAUSES THE INDIVIDUAL REASONABLY TO BELIEVE THAT SUCH INDIVIDUAL'S CONTINUED EMPLOYMENT WOULD JEOPARDIZE HIS OR HER SAFETY OR THE SAFETY OF ANY MEMBER OF HIS OR HER IMMEDIATE FAMILY.

(II) THE ILLNESS OR DISABILITY OF A MEMBER OF THE INDIVIDUAL'S IMMEDIATE FAMILY. FOR THE PURPOSES OF THIS SUBPARAGRAPH:

(A) THE TERM "ILLNESS" MEANS A VERIFIED ILLNESS WHICH NECESSITATES THE CARE OF THE ILL PERSON FOR A PERIOD OF TIME LONGER THAN THE EMPLOYER IS WILLING TO GRANT LEAVE (PAID OR OTHERWISE).

(B) THE TERM "DISABILITY" MEANS A VERIFIED DISABILITY WHICH NECESSITATES THE CARE OF THE DISABLED PERSON FOR A PERIOD OF TIME LONGER THAN THE EMPLOYER IS WILLING TO GRANT LEAVE (PAID OR OTHERWISE). "DISABILITY" ENCOMPASSES ALL TYPES OF DISABILITY, INCLUDING: (1) MENTAL AND PHYSICAL DISABILITY; (2) PERMANENT AND TEMPORARY DISABILITIES; AND (3) PARTIAL AND TOTAL DISABILITIES.

(III) THE NEED FOR THE INDIVIDUAL TO ACCOMPANY SUCH INDIVIDUAL'S SPOUSE (A) TO A PLACE FROM WHICH IT IS IMPRACTICAL FOR SUCH INDIVIDUAL TO COMMUTE AND (B) DUE TO A CHANGE IN LOCATION OF THE SPOUSE'S EMPLOYMENT.

[(b)] (C) A disqualification as provided in this subdivision shall also apply after a claimant's voluntary separation from employment if such voluntary separation was due to claimant's marriage.

S 2. Paragraph (d) of subdivision 2 of section 593 of the labor law, as amended by chapter 282 of the laws of 2002, is amended to read as follows:

(d) the wages or compensation or hours or conditions offered are substantially less favorable to the claimant than those prevailing for similar work in the locality, or are such as tend to depress wages or working conditions; OR

(E) THE CLAIMANT IS SEEKING PART-TIME WORK AS PROVIDED IN SUBDIVISION FIVE OF SECTION FIVE HUNDRED NINETY-SIX OF THIS TITLE AND THE OFFER OF EMPLOYMENT IS NOT COMPARABLE TO HIS OR HER PART-TIME WORK AS DEFINED IN SUCH SUBDIVISION.

S 3. Subdivision 5 of section 596 of the labor law, as added by chapter 705 of the laws of 1944 and as renumbered by section 148-a of part B of chapter 436 of the laws of 1997, is amended to read as follows:

5. [Short-time worker. A] PART TIME WORK. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS ARTICLE, A claimant who for reasons personal to himself OR HERSELF is unable or unwilling to work [usual] full time and who customarily [works] WORKED less than the full time prevailing in his OR HER place of employment [shall register, when unemployed, as a short-time worker in such manner as the commissioner shall prescribe. The time which such claimant normally works in any calendar week shall be deemed his week of full-time employment] FOR A MAJORITY OF THE WEEKS WORKED DURING THE APPLICABLE BASE PERIOD, SHALL NOT BE DENIED UNEMPLOYMENT INSURANCE SOLELY BECAUSE THE CLAIMANT IS ONLY SEEKING PART TIME WORK. FOR PURPOSES OF THIS SUBDIVISION, "SEEKING PART TIME WORK" SHALL MEAN THE CLAIMANT IS WILLING TO WORK FOR A NUMBER OF HOURS PER WEEK THAT ARE COMPARABLE TO THE CLAIMANT'S PART TIME WORK DURING THE MAJORITY OF TIME IN THE BASE PERIOD.

S 4. Section 601 of the labor law, as added by chapter 2 of the laws of 1971, paragraphs (a) and (b) of subdivision 1, paragraph (e) of

subdivision 2, and subdivisions 3 and 6 as amended and paragraph (f) of subdivision 2 as added by chapter 554 of the laws of 1982, clause (i) of subparagraph 1 of paragraph (a) of subdivision 1 as amended by section 3 of chapter 554 of the laws of 1982, paragraphs (c) and (d) of subdivision 2 as amended by chapter 1035 of the laws of 1981, subdivision 4 as amended by chapter 589 of the laws of 1998, subdivision 5 as amended by chapter 1034 of the laws of 1981 and paragraph (f) of subdivision 5 as added by chapter 341 of the laws of 1993, is amended to read as follows:

S 601. Extended benefits. 1. Definitions. For the purposes of this section:

(a) (1) There shall be a "state 'on' indicator" for a week if, as determined by the commissioner in accordance with the regulations of the secretary of labor of the United States, the rate of insured unemployment for the period consisting of such week and the preceding twelve weeks [equals or exceeds]

(i) EQUALED OR EXCEEDED five [percentum] PER CENTUM and

(ii) EQUALED OR EXCEEDED one hundred and twenty [percentum] PER CENTUM of the average of such rates for the corresponding thirteen-week periods ending in each of the preceding two calendar years; OR

(III) FOR WEEKS OF UNEMPLOYMENT BEGINNING ON OR AFTER FEBRUARY FIRST, TWO THOUSAND NINE UNTIL THE WEEK ENDING THREE WEEKS PRIOR TO THE LAST WEEK FOR WHICH ONE HUNDRED PERCENT FEDERAL SHARING IS AUTHORIZED BY SECTION 2005(A) OF PUBLIC LAW 111-5, OR FOR WEEKS OF UNEMPLOYMENT ENDING THREE WEEKS PRIOR TO THE LAST WEEK FOR WHICH CONGRESS, PURSUANT TO ANY FUTURE AMENDMENT OF THE FEDERAL STATE EXTENDED COMPENSATION ACT OF 1970, HAS AUTHORIZED ONE HUNDRED PERCENT FEDERAL SHARING, WHICH MEET THE FOLLOWING:

(A) THE AVERAGE RATE OF TOTAL UNEMPLOYMENT (SEASONABLY ADJUSTED), AS DETERMINED BY THE UNITED STATES SECRETARY OF LABOR, FOR THE PERIOD CONSISTING OF THE MOST RECENT THREE MONTHS FOR WHICH DATA FOR ALL STATES ARE PUBLISHED BEFORE THE CLOSE OF SUCH WEEK EQUALS OR EXCEEDS SIX AND ONE-HALF PERCENT, AND

(B) THE AVERAGE RATE OF TOTAL UNEMPLOYMENT IN THE STATE (SEASONABLY ADJUSTED), AS DETERMINED BY THE UNITED STATES SECRETARY OF LABOR, FOR THE THREE-MONTH PERIOD REFERRED TO IN ITEM (A) OF THIS CLAUSE, EQUALS OR EXCEEDS ONE HUNDRED TEN PERCENT OF THE AVERAGE FOR EITHER OR BOTH OF THE CORRESPONDING THREE-MONTH PERIODS ENDING IN THE TWO PRECEDING CALENDAR YEARS; OR

(IV) FOR ANY PERIOD OF HIGH UNEMPLOYMENT WHICH SHALL OTHERWISE MEET ALL OF THE PROVISIONS OF CLAUSE (III) OF THIS SUBPARAGRAPH, EXCEPT THAT "EIGHT PERCENT" IS SUBSTITUTED FOR "SIX AND ONE-HALF PERCENT" IN ITEM (A) OF CLAUSE (III) OF THIS SUBPARAGRAPH.

(2) There shall be a "state 'off' indicator" for a week [if, as determined by the commissioner in accordance with the regulations of the secretary of labor of the United States, for the period consisting of such week and the preceding twelve weeks either of the conditions set forth under (i) or (ii) of subparagraph (1) is not met] ONLY, IF FOR THE PERIOD CONSISTING OF SUCH WEEK AND THE IMMEDIATELY PRECEDING TWELVE WEEKS, NONE OF THE OPTIONS SPECIFIED IN SUBPARAGRAPH ONE OF THIS PARAGRAPH RESULT IN AN "ON" INDICATOR. NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE, THERE SHALL BE A "STATE 'OFF' INDICATOR" WITH RESPECT TO CLAUSES (III) AND (IV) OF SUBPARAGRAPH ONE OF THIS PARAGRAPH FOR THE WEEK ENDING THREE WEEKS PRIOR TO THE LAST WEEK FOR WHICH ONE HUNDRED PERCENT FEDERAL SHARING IS AUTHORIZED BY SECTION 2005(A) OF PUBLIC LAW 111-5 OR FOR THE WEEK ENDING THREE WEEKS PRIOR TO THE LAST WEEK FOR WHICH CONGRESS, PURSUANT TO ANY FUTURE AMENDMENT OF THE FEDERAL STATE

EXTENDED COMPENSATION ACT OF 1970, HAS AUTHORIZED ONE HUNDRED PERCENT FEDERAL SHARING.

(3) "Rate of insured unemployment" means for the purposes of this paragraph the percentage obtained upon dividing the average weekly number of persons filing claims for regular benefits in this state for unemployment with respect to the most recent thirteen consecutive week period, as determined by the commissioner on the basis of his OR HER reports to the secretary of labor of the United States, by the average monthly employment subject to this article for the first four of the last six calendar quarters ending before the end of such period. Computations required hereunder shall be made in accordance with regulations prescribed by the secretary of labor of the United States.

(4) "RATE OF TOTAL UNEMPLOYMENT" MEANS, FOR THE PURPOSES OF THIS PARAGRAPH, THE AVERAGE PERCENTAGE OBTAINED BY DIVIDING THE TOTAL NUMBER OF UNEMPLOYED RESIDENTS OF THE STATE FOR THE MOST RECENT THREE CONSECUTIVE MONTHS, AS DETERMINED BY THE UNITED STATES BUREAU OF LABOR STATISTICS, BY THE TOTAL CIVILIAN LABOR FORCE OF THE STATE FOR THE SAME THREE-MONTH PERIOD, ALSO AS DETERMINED BY THE UNITED STATES BUREAU OF LABOR STATISTICS. COMPUTATIONS REQUIRED HEREUNDER SHALL BE MADE IN ACCORDANCE WITH REGULATIONS PRESCRIBED BY THE SECRETARY OF LABOR OF THE UNITED STATES.

(b) "Extended benefit period" means a period

(1) beginning with the third week after the first week for which there is a state "on" indicator, except that it may not begin before the fourteenth week after the end of a prior extended benefit period, and

(2) ending with the third week after the first week for which there is a state "off" indicator, except that the duration of such period shall in no event be less than thirteen weeks.

[(d)] (C) "Eligibility period" of a claimant means the period consisting of the weeks in his OR HER benefit year which begin in an extended benefit period and, if his OR HER benefit year ends within such extended benefit period, any weeks thereafter which begin in such period. NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE, A CLAIMANT'S ELIGIBILITY PERIOD SHALL INCLUDE ANY ALTERNATIVE ELIGIBILITY PERIOD PROVIDED FOR IN SECTION 2005(B) OF PUBLIC LAW 111-5 OR OTHER FEDERAL LAW.

[(e)] (D) "Extended benefits" means benefits, INCLUDING BENEFITS PAYABLE TO FEDERAL CIVILIAN EMPLOYEES AND TO EX-SERVICEMEN PURSUANT TO 5 U.S.C. CHAPTER 85, payable to a claimant under the provisions of this section for unemployment in his OR HER eligibility period.

[(f)] (E) "Regular benefits" means benefits payable to a claimant under this article or under any other State unemployment insurance law, INCLUDING BENEFITS PAYABLE TO FEDERAL CIVILIAN EMPLOYEES AND TO EX-SERVICEMEN PURSUANT TO 5 U.S.C. CHAPTER 85, other than extended benefits.

2. Eligibility conditions. Extended benefits shall be payable to a claimant for effective days occurring in any week within an eligibility period, provided the claimant

(a) has exhausted his OR HER rights to regular benefits under this article in his OR HER current benefit year or, his OR HER benefit year having expired prior to such week, he OR SHE does not have the required weeks of employment or earnings to establish a new benefit year, and he OR SHE has no rights to benefits under the unemployment insurance law of any other state;

(b) has no rights to unemployment benefits or allowances under the railroad unemployment insurance act, the trade expansion act of nineteen hundred sixty-two, the automotive products trade act of nineteen hundred sixty-five, or such other federal laws as are specified in regulations issued by the secretary of labor of the United States;

(c) has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada unless, if he OR SHE is seeking such benefits, the appropriate agency finally determines that he OR SHE is not entitled to benefits under such law;

(d) has satisfied the conditions of this article, required to render a claimant eligible for regular benefits, which are applicable to extended benefits, including not being subject to a disqualification or suspension; [and]

(e) is not claiming benefits pursuant to an interstate claim filed under the interstate benefit payment plan in a state where an extended benefit period is not in effect, except that this condition shall not apply with respect to the first eight effective days for which extended benefits shall otherwise be payable pursuant to an interstate claim filed under the interstate benefit payment plan; and

(f) in his OR HER base period has [twenty weeks of full time employment subject to this article or] remuneration [which equals or exceeds forty times his most recent benefit rate] OF ONE AND ONE-HALF TIMES THE HIGH CALENDAR QUARTER EARNINGS IN ACCORDANCE WITH SECTION FIVE HUNDRED TWENTY-SEVEN OF THIS ARTICLE.

3. Extended benefit amounts; rate and duration. Extended benefits shall be paid to a claimant

(a) at a rate equal to his OR HER rate for regular benefits during his OR HER applicable benefit year but

(b) for not more than fifty-two effective days 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 days 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

(D) FOR PERIODS OF HIGH UNEMPLOYMENT FOR NOT MORE THAN EIGHTY EFFECTIVE DAYS WITH RESPECT TO THE APPLICABLE BENEFIT YEAR WITH A TOTAL MAXIMUM AMOUNT EQUAL TO EIGHTY PERCENT OF THE TOTAL MAXIMUM AMOUNT OF REGULAR BENEFITS PAYABLE IN SUCH BENEFIT YEAR.

4. Charging of extended benefits. The provisions of paragraph (e) of subdivision one of section five hundred eighty-one OF THIS ARTICLE shall apply to benefits paid pursuant to the provisions of this section, and if they were paid for effective days occurring in weeks following the end of a benefit year, they shall be deemed paid with respect to that benefit year. However, except for governmental entities as defined in section five hundred sixty-five AND INDIAN TRIBES AS DEFINED IN SECTION FIVE HUNDRED SIXTY-SIX OF THIS ARTICLE, only one-half of the amount of such benefits shall be debited to the employers' account; the remainder thereof shall be debited to the general account, and such account shall be credited with the amount of payments received in the fund pursuant to the provisions of the federal-state extended unemployment compensation act. NOTWITHSTANDING THE FOREGOING, WHERE THE STATE HAS ENTERED AN EXTENDED BENEFIT PERIOD TRIGGERED PURSUANT TO SUBPARAGRAPH ONE OF PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION FOR WHICH FEDERAL LAW PROVIDES FOR ONE HUNDRED PERCENT FEDERAL SHARING OF THE COSTS OF BENEFITS, ALL CHARGES SHALL BE DEBITED TO THE GENERAL ACCOUNT AND SUCH ACCOUNT SHALL BE CREDITED WITH THE AMOUNT OF PAYMENTS RECEIVED IN THE

FUND PURSUANT TO THE PROVISIONS OF THE FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION ACT OR OTHER FEDERAL LAW PROVIDING FOR ONE HUNDRED PERCENT FEDERAL SHARING FOR THE COST OF SUCH BENEFITS.

5. Applicability of other provisions. (a) Unless inconsistent with the provisions of this section, all provisions of this article shall apply to [entended] EXTENDED benefits in the same manner as they apply to regular benefits.

(b) No days of total unemployment shall be deemed to occur in any week within an eligibility period during which a claimant fails to accept any offer of suitable work or fails to apply for suitable work to which he OR SHE was referred by the commissioner, who shall make such referral if such work is available, or during which he OR SHE fails to engage actively in seeking work by making a systematic and sustained effort to obtain work and providing tangible evidence of such effort, and until he OR SHE has worked in employment during at least four subsequent weeks and earned remuneration of at least four times his OR HER benefit rate.

(c) For purposes of this subdivision, "suitable work" means any employment which is within the claimant's capabilities, but if he OR SHE furnishes evidence that his OR HER prospects for obtaining work in his OR HER customary occupation within a reasonably short period are good, the provisions of subdivision two of section five hundred ninety-three of this article shall apply instead of the provisions hereof.

(d) Notwithstanding the foregoing, a claimant shall not be disqualified for a failure to accept an offer of or apply for suitable work if

(i) the gross average weekly remuneration payable for the employment does not exceed the claimant's benefit rate plus the amount of any supplemental unemployment compensation benefits (as defined in section five hundred one (c) (17) (D) of the internal revenue code of nineteen hundred fifty-four) payable to the claimant for such week; or

(ii) the employment was not offered to the claimant in writing and was not listed with the department; or

(iii) such failure would not result in denial of regular benefits, to the extent that the provisions of this article for payment of regular benefits are not inconsistent with the provisions of this subdivision; or

(iv) the employment pays wages less than the higher of the minimum wage provided by section six (a) (1) of the fair labor standards act of nineteen hundred thirty-eight, without regard to any exemption, or the minimum wage provided under this chapter; OR

(V) THE CLAIMANT IS IN APPROVED TRAINING PURSUANT TO SECTION FIVE HUNDRED NINETY-NINE OF THIS TITLE.

(e) No days of total unemployment shall be deemed to occur in any week within an eligibility period [with respect to a claimant who was disqualified for twelve months for an act constituting a felony as provided in subdivision four of] UNDER section five hundred ninety-three of this article, until he OR SHE has subsequently worked in employment [on not less than three days in each of four weeks or earned remuneration of at least two hundred dollars, whether during or subsequent to the twelve month period] IN ACCORDANCE WITH THE REQUIREMENTS SET FORTH IN SECTION FIVE HUNDRED NINETY-THREE OF THIS ARTICLE.

[(f) The provisions of paragraphs (b), (c), (d) and (e) of subdivision five of this section shall not apply to weeks of unemployment beginning after March sixth, nineteen hundred ninety-three and before January first, nineteen hundred ninety-five.]

6. Suspension of condition for state indicators. The governor, by executive order, upon advice by the [industrial] commissioner and the

commissioner of [commerce] ECONOMIC DEVELOPMENT may for a period specified in the order suspend the applicability of the provisions of [item] CLAUSE (ii) of subparagraph [(1)] ONE of paragraph (a) of subdivision one of this section, or of the reference to such [item] SUBPARAGRAPH ONE in subparagraph [(2)] TWO of such paragraph, or of both, if he OR SHE finds that such suspension is required in order to assure adequate payment of benefits to unemployed workers in the state who are experiencing unemployment for an extended duration, provided the rate of insured unemployment for the applicable period equals or exceeds six [percentum] PER CENTUM and such suspension is not in conflict with the provisions of the federal-state extended unemployment compensation act. The governor may at any time prolong or shorten the period specified in such order.

S 5. This act shall take effect immediately.