

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:

1 Section 1. Subdivision 1 of section 593 of the labor law, as amended
2 by chapter 415 of the laws of 1983, paragraph (a) as amended by chapter
3 268 of the laws of 1999, and paragraph (b) as amended by chapter 589 of
4 the laws of 1998, is amended to read as follows:
5 1. Voluntary separation; SEPARATION FOR A COMPELLING FAMILY REASON.
6 (a) No days of total unemployment shall be deemed to occur after a
7 claimant's voluntary separation without good cause from employment until
8 he or she has subsequently worked in employment and earned remuneration
9 at least equal to five times his or her weekly benefit rate. In addition
10 to other circumstances that may be found to constitute good cause,
11 INCLUDING A COMPELLING FAMILY REASON AS SET FORTH IN PARAGRAPH (B) OF
12 THIS SUBDIVISION, voluntary separation from employment shall not in
13 itself disqualify a claimant if circumstances have developed in the
14 course of such employment that would have justified the claimant in
15 refusing such employment in the first instance under the terms of subdivision
16 two of this section or if the claimant, pursuant to an option
17 provided under a collective bargaining agreement or written employer
18 plan which permits waiver of his right to retain the employment when
19 there is a temporary layoff because of lack of work, has elected to be
20 separated for a temporary period and the employer has consented thereto.
21 (B) A [voluntary separation may also be deemed for good cause if it
22 occurred as a consequence of circumstances directly resulting from the
23 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.

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

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

9 (II) THE ILLNESS OR DISABILITY OF A MEMBER OF THE INDIVIDUAL'S IMMEDI-
10 ATE FAMILY. FOR THE PURPOSES OF THIS SUBPARAGRAPH:

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

14 (B) THE TERM "DISABILITY" MEANS A VERIFIED DISABILITY WHICH NECESSI-
15 TATES THE CARE OF THE DISABLED PERSON FOR A PERIOD OF TIME LONGER THAN
16 THE EMPLOYER IS WILLING TO GRANT LEAVE (PAID OR OTHERWISE). "DISABILI-
17 TY" ENCOMPASSES ALL TYPES OF DISABILITY, INCLUDING: (1) MENTAL AND PHYS-
18 ICAL DISABILITY; (2) PERMANENT AND TEMPORARY DISABILITIES; AND (3)
19 PARTIAL AND TOTAL DISABILITIES.

20 (III) THE NEED FOR THE INDIVIDUAL TO ACCOMPANY SUCH INDIVIDUAL'S
21 SPOUSE (A) TO A PLACE FROM WHICH IT IS IMPRACTICAL FOR SUCH INDIVIDUAL
22 TO COMMUTE AND (B) DUE TO A CHANGE IN LOCATION OF THE SPOUSE'S EMPLOY-
23 MENT.

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

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

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

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

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

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

55 S 4. Section 601 of the labor law, as added by chapter 2 of the laws
56 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

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

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

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

21 (b) "Extended benefit period" means a period

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (b) for not more than fifty-two effective days with respect to his OR
26 HER applicable benefit year, with a total maximum amount equal to fifty
27 percentum of the total maximum amount of regular benefits payable in
28 such benefit year, and

29 (c) if a claimant's benefit year ends within an extended benefit peri-
30 od, the remaining balance of extended benefits to which he OR SHE would
31 be entitled, if any, shall be reduced by the number of effective days
32 for which he OR SHE was entitled to receive trade readjustment allow-
33 ances under the federal trade act of nineteen hundred seventy-four
34 during such benefit year, AND

35 (D) FOR PERIODS OF HIGH UNEMPLOYMENT FOR NOT MORE THAN EIGHTY EFFEC-
36 TIVE DAYS WITH RESPECT TO THE APPLICABLE BENEFIT YEAR WITH A TOTAL MAXI-
37 MUM AMOUNT EQUAL TO EIGHTY PERCENT OF THE TOTAL MAXIMUM AMOUNT OF REGU-
38 LAR BENEFITS PAYABLE IN SUCH BENEFIT YEAR.

39 4. Charging of extended benefits. The provisions of paragraph (e) of
40 subdivision one of section five hundred eighty-one OF THIS ARTICLE shall
41 apply to benefits paid pursuant to the provisions of this section, and
42 if they were paid for effective days occurring in weeks following the
43 end of a benefit year, they shall be deemed paid with respect to that
44 benefit year. However, except for governmental entities as defined in
45 section five hundred sixty-five AND INDIAN TRIBES AS DEFINED IN SECTION
46 FIVE HUNDRED SIXTY-SIX OF THIS ARTICLE, only one-half of the amount of
47 such benefits shall be debited to the employers' account; the remainder
48 thereof shall be debited to the general account, and such account shall
49 be credited with the amount of payments received in the fund pursuant to
50 the provisions of the federal-state extended unemployment compensation
51 act. NOTWITHSTANDING THE FOREGOING, WHERE THE STATE HAS ENTERED AN

52 EXTENDED BENEFIT PERIOD TRIGGERED PURSUANT TO SUBPARAGRAPH ONE OF PARA-
53 GRAPH (A) OF SUBDIVISION ONE OF THIS SECTION FOR WHICH FEDERAL LAW
54 PROVIDES FOR ONE HUNDRED PERCENT FEDERAL SHARING OF THE COSTS OF BENE-
55 FITS, ALL CHARGES SHALL BE DEBITED TO THE GENERAL ACCOUNT AND SUCH
56 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

1 commissioner of [commerce] ECONOMIC DEVELOPMENT may for a period speci-
2 fied in the order suspend the applicability of the provisions of [item]
3 CLAUSE (ii) of subparagraph [(1)] ONE of paragraph (a) of subdivision
4 one of this section, or of the reference to such [item] SUBPARAGRAPH ONE
5 in subparagraph [(2)] TWO of such paragraph, or of both, if he OR SHE
6 finds that such suspension is required in order to assure adequate
7 payment of benefits to unemployed workers in the state who are experi-
8 encing unemployment for an extended duration, provided the rate of
9 insured unemployment for the applicable period equals or exceeds six
10 [percentum] PER CENTUM and such suspension is not in conflict with the
11 provisions of the federal-state extended unemployment compensation act.
12 The governor may at any time prolong or shorten the period specified in
13 such order.
14 S 5. This act shall take effect immediately.