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

3359

2009-2010 Regular Sessions

I N S E N A T E

March 17, 2009

Introduced by Sens. ONORATO, ADDABBO, BRESLIN, SAVINO -- (at request of the Department of Labor) -- 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 unemployment benefits for innocent bystanders during an industrial controversy

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

Section 1. Subdivision 1 of section 592 of the labor law, as amended by chapter 609 of the laws of 2008, is amended to read as follows:

1. Industrial controversy. (A) The accumulation of benefit rights by a claimant shall be suspended during a period of seven consecutive weeks beginning with the day after such claimant lost his or her employment because of a strike or other industrial controversy except for lockouts, including concerted activity not authorized or sanctioned by the recognized or certified bargaining agent of the claimant, and other concerted activity conducted in violation of any existing collective bargaining agreement, in the establishment in which he or she was employed, except that benefit rights may be accumulated before the expiration of such seven weeks beginning with the day after such strike or other industrial controversy was terminated[; provided, however, this waiting period shall not apply upon the hiring of].

(B) BENEFITS SHALL NOT BE SUSPENDED UNDER THIS SECTION IF:

(I) THE EMPLOYER HIRES a permanent replacement worker for the employee's position [by the employer]. A replacement worker shall be presumed to be permanent unless the employer certifies in writing that the employee will be able to return to his or her prior position upon conclusion of the strike, in the event the strike terminates prior to the conclusion of the employee's eligibility for benefit rights under this chapter. In the event the employer does not permit such return after such certification, the employee shall be entitled to recover [with interest] any benefits lost as a result of the seven week suspen-

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

LBD09030-03-9

sion of benefits, and the department may impose a penalty upon the employer of up to seven hundred fifty dollars per employee per week of benefits lost. THE PENALTY COLLECTED SHALL BE PAID INTO THE UNEMPLOYMENT INSURANCE CONTROL FUND ESTABLISHED PURSUANT TO SECTION FIVE HUNDRED FIFTY-TWO-B OF THIS ARTICLE; OR

(II) THE COMMISSIONER DETERMINES THAT THE CLAIMANT:

(A) IS NOT EMPLOYED BY AN EMPLOYER THAT IS INVOLVED IN THE INDUSTRIAL CONTROVERSY THAT CAUSED HIS OR HER UNEMPLOYMENT AND IS NOT PARTICIPATING IN THE INDUSTRIAL CONTROVERSY; OR

(B) IS NOT IN A BARGAINING UNIT INVOLVED IN THE INDUSTRIAL CONTROVERSY THAT CAUSED HIS OR HER UNEMPLOYMENT AND IS NOT PARTICIPATING IN THE INDUSTRIAL CONTROVERSY.

S 2. This act shall take effect immediately and shall apply to loss of employment beginning on or after such effective date.