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

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I N A S S E M B L Y

(PREFILED)

January 4, 2012

Introduced by M. of A. HAWLEY -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to ending the ability of a striking worker to collect unemployment benefits

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

Section 1. Section 592 of the labor law, as amended by chapter 415 of the laws of 1983, subdivision 1 as amended by chapter 177 of the laws of 2010, is amended to read as follows:

S 592. Suspension of accumulation of benefit rights. 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].

(b) Benefits shall not be suspended under this section if:

(i) The employer hires a permanent replacement worker for the employee's position. A replacement worker shall be presumed to be [permanent] TEMPORARY unless the employer [certifies in writing that] DENIES the employee [will be able] THE OPPORTUNITY 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 REPLACEMENT WORKER SHALL BE DEEMED TO HAVE BEEN A PERMANENT REPLACEMENT WORKER AND the employee shall be entitled to recover any benefits lost as a result of the [seven week] suspension of benefits[, and the department may impose a penalty

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

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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.

2. Concurrent payments prohibited. No days of total unemployment shall be deemed to occur in any week with respect to which or a part of which a claimant has received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States, provided that this provision shall not apply if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits.

3. Terms of suspension. No waiting period may be served during a suspension period.

The suspension of accumulation of benefit rights shall not be terminated by subsequent employment of the claimant irrespective of when the claim is filed except as provided in subdivision one and shall not be confined to a single benefit year.

[A "week" as used in subdivision one of this section means any seven consecutive calendar days.]

S 2. This act shall take effect immediately.