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

2633

2013-2014 Regular Sessions

I N A S S E M B L Y

January 17, 2013

Introduced by M. of A. MORELLE, SCHIMMINGER -- Multi-Sponsored by -- M. of A. CLARK -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to the elimination of employer unemployment contributions for employees fired for misconduct

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

Section 1. Subparagraph 2 of paragraph (e) of subdivision 1 of section 581 of the labor law is amended by adding a new clause (vi) to read as follows:

(VI) IN THOSE INSTANCES WHERE THE CLAIMANT HAS BEEN DENIED BENEFITS DUE TO TERMINATION FOR MISCONDUCT, THE TERMINATING EMPLOYER SHALL BE EXCLUDED FROM A CALCULATION OF BENEFITS UNDER THIS SUBPARAGRAPH.

S 2. Section 581 of the labor law is amended by adding a new subdivision 2-a to read as follows:

2-A. AN EMPLOYER'S ACCOUNT SHALL NOT BE CHARGED, AND CHARGES SHALL NOT BE MADE TO THE GENERAL ACCOUNT, FOR BENEFITS PAID TO A CLAIMANT WHEN SUCH CLAIMANT FITS THE CRITERIA DESCRIBED IN SECTION FIVE HUNDRED NINETY-FOUR-A OF THIS ARTICLE OR WHEN SUCH EMPLOYER IS SUCCESSFUL IN A HEARING AS PROVIDED BY SECTION FIVE HUNDRED NINETY-THREE-A OF THIS ARTICLE.

S 3. The labor law is amended by adding a new section 594-a to read as follows:

S 594-A. REDUCTION IN BENEFITS DUE TO MISCONDUCT. 1. WHENEVER AN INDIVIDUAL WHO HAS FILED A PREVIOUS VALID ORIGINAL CLAIM PURSUANT TO THIS TITLE HAS RECEIVED REMUNERATION FROM EMPLOYMENT SUBSEQUENT TO FILING A VALID ORIGINAL CLAIM AND SUCH INDIVIDUAL HAS BEEN RELIEVED OF SUCH EMPLOYMENT THROUGH MISCONDUCT, SUCH INDIVIDUAL'S VALID ORIGINAL CLAIM SHALL BE REDUCED BY THE AMOUNT OF REMUNERATION RECEIVED SUBSEQUENT TO FILING THE VALID ORIGINAL CLAIM; PROVIDED THAT SUCH REDUCTION SHALL APPLY TO AT LEAST THE FIRST FOUR BUT NOT MORE THAN THE FIRST EIGHTY EFFECTIVE DAYS FOLLOWING ANY RE-FILING OR ATTEMPT TO COLLECT BENEFITS ON SUCH VALID ORIGINAL CLAIM.

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

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2. WHENEVER SUCH INDIVIDUAL AS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION RE-FILES OR COLLECTS BENEFITS ON HIS OR HER VALID ORIGINAL CLAIM, EMPLOYERS IN THE BASE PERIOD OF SUCH VALID ORIGINAL CLAIM SHALL NOT CONTRIBUTE A HIGHER PERCENTAGE OF BENEFITS OF SUCH VALID ORIGINAL CLAIM NOR SHALL ANY REMUNERATION RECEIVED BY SUCH INDIVIDUAL FROM AN EMPLOYER THAT HAS RELIEVED HIM OR HER FROM EMPLOYMENT FOR MISCONDUCT BE INCLUDED IN ANY BASE PERIOD CALCULATION.

S 4. Subdivision 3 of section 593 of the labor law, as amended by chapter 589 of the laws of 1998, is amended to read as follows:

3. Misconduct. No days of total unemployment shall be deemed to occur after a claimant lost employment through misconduct in connection with his or her 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].

S 5. The labor law is amended by adding a new section 593-a to read as follows:

S 593-A. MISCONDUCT; HEARINGS AND DETERMINATIONS. 1. WHENEVER AN EMPLOYER IN THE BASE PERIOD RECEIVES NOTICE THAT A CLAIMANT HAS FILED A CLAIM AND SUCH EMPLOYER HAS TERMINATED SUCH CLAIMANT FOR MISCONDUCT, SUCH EMPLOYER MAY OBJECT TO SUCH CLAIM; PROVIDED, THAT SUCH OBJECTION MUST BE FILED WITH THE DEPARTMENT WITHIN TEN DAYS OF SERVICE OF SUCH NOTICE.

2. IF ANY EMPLOYER DESCRIBED IN SUBDIVISION ONE OF THIS SECTION COMPLIES WITH THE FILING REQUIREMENTS OF SUCH SECTION THEN SUCH EMPLOYER SHALL BE ENTITLED TO A HEARING WITH THE DEPARTMENT WITHIN THIRTY DAYS OF THE FILING DATE OF SUCH OBJECTION. IF SUCH EMPLOYER PREVAILS IN SUCH A HEARING THEN THE DETERMINATION OF THE DEPARTMENT SHALL CONSTITUTE A FINAL DETERMINATION FOR PURPOSES OF THIS CHAPTER.

3. IF THE TERMINATING EMPLOYER SUCCESSFULLY DEMONSTRATES THAT SUCH CLAIMANT WAS TERMINATED FOR MISCONDUCT THEN SUCH EMPLOYER SHALL NOT BE INCLUDED IN ANY BASE PERIOD, WHETHER PRIOR OR SUBSEQUENT TO ANY VALID ORIGINAL CLAIM, FOR PURPOSES OF CONTRIBUTION TO THE GENERAL ACCOUNT. IF SUCH EMPLOYER SUCCESSFULLY DEMONSTRATES THAT SUCH CLAIMANT WAS TERMINATED FOR MISCONDUCT THEN SUCH EMPLOYER'S EXPERIENCE RATING SHALL REMAIN UNCHANGED.

S 6. This act shall take effect immediately.