

STATE OF NEW YORK

9759

IN ASSEMBLY

February 5, 2018

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

AN ACT to amend the labor law, in relation to the calculation of weekly employment insurance benefits for workers who are partially unemployed; and repealing certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 522 of the labor law, as amended by chapter 720 of
2 the laws of 1953, is amended to read as follows:

3 § 522. Total unemployment and partial unemployment. "Total unemploy-
4 ment" means the total lack of any employment [~~on any day~~] during any
5 week. "Partial employment" means any employment during any week that is
6 less than full-time employment so long as the compensation paid is less
7 than the claimant's weekly benefit rate plus the claimant's partial
8 benefit credit. The term "employment" as used in this section means any
9 employment including that not defined in this title.

10 § 2. Section 523 of the labor law is REPEALED and a new section 523 is
11 added to read as follows:

12 § 523. Effective week. "Effective week" means (a) a week during which
13 a claimant performs no services for which the claimant is paid compen-
14 sation, or (b) a week during which a claimant performs services on a
15 part-time basis for which the claimant is paid compensation that is less
16 than the claimant's weekly benefit rate plus his or her partial benefit
17 credit.

18 § 3. The labor law is amended by adding a new section 525 to read as
19 follows:

20 § 525. Partial benefit credit. "Partial benefit credit" means that
21 part of the compensation, if any, paid to a claimant with respect to a
22 week for which benefits are claimed under the provisions of this law
23 which is not in excess of fifty per centum of the individual's weekly
24 benefit rate, or one hundred dollars, whichever is the greater. Such
25 partial benefit credit, if not a multiple of one dollar, shall be
26 computed to the next higher multiple of one dollar.

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

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§ 4. Subdivision 4 of section 527 of the labor law, as amended by chapter 832 of the laws of 1968 and as renumbered by chapter 381 of the laws of 1984, is amended to read as follows:

4. General condition. A valid original claim may be filed only in a week ~~[in which the claimant has at least one effective day of unemployment]~~ that qualifies as an effective week of unemployment for the claimant.

§ 5. Subparagraph 2 of paragraph (e) of subdivision 1 of section 581 of the labor law, as amended by chapter 282 of the laws of 2002 and clause (v) as added by chapter 106 of the laws of 2007, is amended to read as follows:

(2) Benefits payable to any claimant with respect to the claimant's then current benefit year shall be charged, when paid, to the account of the last employer prior to the filing of a valid original claim in an amount equal to seven times the claimant's benefit rate. Thereafter, such charges shall be made to the account of each employer in the base period used to establish the valid original claim in the same proportion that the remuneration paid by each employer to the claimant during that base period bears to the remuneration paid by all employers to the claimant during that base period except as provided below:

(i) In those instances where the claimant may not utilize wages paid to establish entitlement based upon subdivision ten of section five hundred ninety of this article and an educational institution is the claimant's last employer prior to the filing of the claim for benefits, or the claimant performed services in such educational institution in such capacity while employed by an educational service agency which is the claimant's last employer prior to the filing of the claim for benefits, such employer shall not be liable for benefit charges for the first ~~[twenty-eight effective days]~~ seven effective weeks of benefits paid as otherwise provided by this section. Under such circumstances, benefits paid shall be charged to the general account. In addition, wages paid during the base period by such educational institutions, or for services in such educational institutions for claimants employed by an educational service agency shall not be considered base period wages during periods that such wages may not be used to gain entitlement to benefits pursuant to subdivision ten of section five hundred ninety of this article.

(ii) In those instances where the claimant may not utilize wages paid to establish entitlement based upon subdivision eleven of section five hundred ninety of this article and an educational institution is the claimant's last employer prior to the filing of the claim for benefits, or the claimant performed services in such educational institution in such capacity while employed by an educational service agency which is the claimant's last employer prior to the filing of the claim for benefits, such employer shall not be liable for benefit charges for the first ~~[twenty-eight effective days]~~ seven effective weeks of benefits paid as otherwise provided by this section. Under such circumstances, benefits paid will be charged to the general account. In addition, wages paid during the base period by such educational institutions, or for services in such educational institutions for claimants employed by an educational service agency shall not be considered base period wages during periods that such wages may not be used to gain entitlement to benefits pursuant to subdivision eleven of section five hundred ninety of this article. However, in those instances where a claimant was not afforded an opportunity to perform services for the educational institution for the next academic year or term after reasonable assurance was

provided, such employer shall be liable for benefit charges as provided for in this paragraph for any retroactive payments made to the claimant.

(iii) In those instances where the federal government is the claimant's last employer prior to the filing of the claim for benefits and such employer is not a base-period employer, payments equaling the first ~~[twenty-eight effective days]~~ seven effective weeks of benefits as otherwise prescribed by this section shall be charged to the general account. In those instances where the federal government is the claimant's last employer prior to the filing of the claim for benefits and a base-period employer, such employer shall be liable for charges for all benefits paid on such claim in the same proportion that the remuneration paid by such employer during the base period bears to the remuneration paid by all employers during the base period. In addition, benefit payment charges for the first ~~[twenty-eight effective days]~~ seven effective weeks of benefits other than those chargeable to the federal government as prescribed above shall be made to the general account.

(iv) In those instances where a combined wage claim is filed pursuant to interstate reciprocal agreements and the claimant's last employer prior to the filing of the claim is an out-of-state employer and such employer is not a base-period employer, benefit payments equaling the first ~~[twenty-eight effective days]~~ seven effective weeks of benefits as otherwise prescribed by this section shall be charged to the general account. In those instances where the out-of-state employer is the last employer prior to the filing of the claim for benefits and a base-period employer such employer shall be liable for charges for all benefits paid on such claim in the same proportion that the remuneration paid by such employer during the base period bears to the remuneration paid by all employers during the base period. In addition, benefit payment charges for the ~~[twenty-eight effective days]~~ seven effective weeks of benefits other than those chargeable to the out-of-state employer as prescribed above shall be made to the general account.

(v) In those instances where the last employer prior to the filing of a valid original claim has paid total remuneration to the claimant during the period from the start of the base period used to establish the benefit claim until the date of the claimant's filing of the valid original claim in an amount less than or equal to six times the claimant's benefit rate and the last employer has substantiated such amount to the satisfaction of the commissioner within ten days of the commissioner's original notice of potential charges to such last employer's account, benefits shall be charged as follows: benefits payable to the claimant with respect to the claimant's then current benefit year shall be charged, when paid, to the account of such last employer prior to the filing of a valid original claim in an amount equal to the lowest whole number (one, two, three, four, five, or six) times the claimant's benefit rate where the product of such lowest whole number times the claimant's benefit rate is equal to or greater than such total remuneration paid by such last employer to the claimant. Thereafter, such charges shall be made to the account of each employer in the base period used to establish the valid original claim in the same proportion that the remuneration paid by each employer to the claimant during that base period bears to the remuneration paid by all employers to the claimant during that base period. Notice of such recalculation of potential charges shall be given to the last employer and each employer of the claimant in the base period used to establish the valid original claim.

§ 6. Subdivision 1 of section 590 of the labor law, as amended by chapter 645 of the laws of 1951, is amended to read as follows:

1 1. Entitlement to benefits. A claimant shall be entitled to accumulate
2 effective [~~days~~] weeks for the purpose of benefit rights only if he has
3 complied with the provisions of this article regarding the filing of his
4 claim, including the filing of a valid original claim, registered as
5 totally or partially unemployed, reported his subsequent employment and
6 unemployment, and reported for work or otherwise given notice of the
7 continuance of his unemployment.

8 § 7. Subdivision 3 of section 590 of the labor law, as amended by
9 chapter 645 of the laws of 1951, is amended to read as follows:

10 3. Compensable periods. Benefits shall be paid for each [~~accumulation~~
11 ~~of~~] effective [~~days within a~~] week.

12 § 8. Subdivision 4 of section 590 of the labor law, as amended by
13 chapter 457 of the laws of 1987, is amended to read as follows:

14 4. Duration. Benefits shall not be paid [~~for more than one hundred and~~
15 ~~four effective days~~] in an amount greater than twenty-six times the
16 claimant's weekly benefit rate in any benefit year, except as provided
17 in section six hundred one and subdivision two of section five hundred
18 ninety-nine of this chapter.

19 § 9. Subdivision 5 of section 590 of the labor law is amended by
20 adding two new paragraphs (c) and (d) to read as follows:

21 (c) Benefit for partial unemployment. Except as provided in paragraph
22 (d) of this subdivision, any claimant who is partially unemployed with
23 respect to any effective week shall be paid, with respect to such effec-
24 tive week, a benefit equal to his weekly benefit rate less the total of
25 the remuneration, if any, paid or payable to him with respect to such
26 week for services performed which is in excess of his partial benefit
27 credit.

28 (d) Benefit for partial unemployment for certain claimants working one
29 day in a week. Any claimant who is partially unemployed with respect to
30 any effective week but whose employment is limited to one day during
31 that effective week and whose remuneration paid or payable to him with
32 respect to such week for services performed is less than his weekly
33 benefit rate shall be paid, with respect to such effective week, a bene-
34 fit equal to three-quarters of his weekly benefit rate, or if higher,
35 the benefit calculated pursuant to paragraph (c) of this subdivision.

36 § 10. Subdivision 6 of section 590 of the labor law, as added by chap-
37 ter 720 of the laws of 1953 and as renumbered by chapter 675 of the laws
38 of 1977, is amended to read as follows:

39 6. Notification requirement. No effective [~~day~~] week shall be counted
40 for any purposes except effective [~~days~~] weeks as to which notification
41 has been given in a manner prescribed by the commissioner.

42 § 11. Subdivision 7 of section 590 of the labor law, as amended by
43 chapter 415 of the laws of 1983, is amended to read as follows:

44 7. Waiting period. A claimant shall not be entitled to accumulate
45 effective [~~days~~] weeks for the purpose of benefit payments until he has
46 accumulated a waiting period of [~~four effective days either wholly with-~~
47 ~~in the week in which he established his valid original claim or partly~~
48 ~~within such week and partly within his benefit year initiated by such~~
49 ~~claim~~] one effective week.

50 § 12. Subdivision 1 of section 591 of the labor law, as amended by
51 chapter 413 of the laws of 2003, is amended to read as follows:

52 1. Unemployment. Benefits, except as provided in section five hundred
53 ninety-one-a of this title, shall be paid only to a claimant who is
54 totally unemployed or partially unemployed and who is unable to engage
55 in his usual employment or in any other for which he is reasonably
56 fitted by training and experience. A claimant who is receiving benefits

1 under this article shall not be denied such benefits pursuant to this
2 subdivision or to subdivision two of this section because of such claim-
3 ant's service on a grand or petit jury of any state or of the United
4 States.

5 § 13. Subdivision 1 of section 591 of the labor law, as amended by
6 chapter 446 of the laws of 1981, is amended to read as follows:

7 1. Unemployment. Benefits shall be paid only to a claimant who is
8 totally unemployed or partially unemployed and who is unable to engage
9 in his usual employment or in any other for which he is reasonably
10 fitted by training and experience. A claimant who is receiving benefits
11 under this article shall not be denied such benefits pursuant to this
12 subdivision or to subdivision two of this section because of such claim-
13 ant's service on a grand or petit jury of any state or of the United
14 States.

15 § 14. Paragraph (a) of subdivision 3 of section 591 of the labor law
16 is REPEALED and a new paragraph (a) is added to read as follows:

17 (a) Compensation paid to a claimant for any day during a paid vacation
18 period, or for a paid holiday, shall be considered compensation from
19 employment.

20 § 15. Subparagraph (i) of paragraph (b) of subdivision 2 of section
21 591-a of the labor law, as amended by section 14 of part 0 of chapter 57
22 of the laws of 2013, is amended to read as follows:

23 (i) requirements relating to total unemployment and partial unemploy-
24 ment, as defined in section five hundred twenty-two of this article,
25 availability for work and search for work, as set forth in subdivision
26 two of section five hundred ninety-one of this title and refusal to
27 accept work, as set forth in subdivision two of section five hundred
28 ninety-three of this title, are not applicable to such individuals;

29 § 16. Subdivision 2 of section 592 of the labor law, as amended by
30 chapter 415 of the laws of 1983, is amended to read as follows:

31 2. Concurrent payments prohibited. No ~~[days]~~ weeks of total unemploy-
32 ment or partial unemployment shall be deemed to occur in any week with
33 respect to which ~~[or a part of which]~~ a claimant has received or is
34 seeking unemployment benefits under an unemployment compensation law of
35 any other state or of the United States, provided that this provision
36 shall not apply if the appropriate agency of such other state or of the
37 United States finally determines that he is not entitled to such unem-
38 ployment benefits.

39 § 17. Paragraph (a) of subdivision 1 of section 593 of the labor law,
40 as amended by section 15 of part 0 of chapter 57 of the laws of 2013, is
41 amended to read as follows:

42 (a) No ~~[days]~~ weeks of total unemployment or partial unemployment
43 shall be deemed to occur after a claimant's voluntary separation without
44 good cause from employment until he or she has subsequently worked in
45 employment and earned remuneration at least equal to ten times his or
46 her weekly benefit rate. In addition to other circumstances that may be
47 found to constitute good cause, including a compelling family reason as
48 set forth in paragraph (b) of this subdivision, voluntary separation
49 from employment shall not in itself disqualify a claimant if circum-
50 stances have developed in the course of such employment that would have
51 justified the claimant in refusing such employment in the first instance
52 under the terms of subdivision two of this section or if the claimant,
53 pursuant to an option provided under a collective bargaining agreement
54 or written employer plan which permits waiver of his or her right to
55 retain the employment when there is a temporary layoff because of lack

1 of work, has elected to be separated for a temporary period and the
2 employer has consented thereto.

3 § 18. The opening paragraph of subdivision 2 of section 593 of the
4 labor law, as amended by section 15 of part 0 of chapter 57 of the laws
5 of 2013, is amended to read as follows:

6 No ~~[days]~~ weeks of total unemployment or partial unemployment shall be
7 deemed to occur beginning with the ~~[day-on]~~ week in which a claimant,
8 without good cause, refuses to accept an offer of employment for which
9 he or she is reasonably fitted by training and experience, including
10 employment not subject to this article, until he or she has subsequently
11 worked in employment and earned remuneration at least equal to ten times
12 his or her weekly benefit rate. Except that claimants who are not
13 subject to a recall date or who do not obtain employment through a union
14 hiring hall and who are still unemployed after receiving ten weeks of
15 benefits shall be required to accept any employment proffered that such
16 claimants are capable of performing, provided that such employment would
17 result in a wage not less than eighty percent of such claimant's high
18 calendar quarter wages received in the base period and not substantially
19 less than the prevailing wage for similar work in the locality as
20 provided for in paragraph (d) of this subdivision. No refusal to accept
21 employment shall be deemed without good cause nor shall it disqualify
22 any claimant otherwise eligible to receive benefits if:

23 § 19. Subdivision 3 of section 593 of the labor law, as amended by
24 section 15 of part 0 of chapter 57 of the laws of 2013, is amended to
25 read as follows:

26 3. Misconduct. No ~~[days]~~ weeks of total unemployment or partial unem-
27 ployment shall be deemed to occur after a claimant lost employment
28 through misconduct in connection with his or her employment until he or
29 she has subsequently worked in employment and earned remuneration at
30 least equal to ten times his or her weekly benefit rate.

31 § 20. Subdivision 4 of section 593 of the labor law, as amended by
32 chapter 589 of the laws of 1998, is amended to read as follows:

33 4. Criminal acts. No ~~[days]~~ weeks of total unemployment or partial
34 unemployment shall be deemed to occur during a period of twelve months
35 after a claimant loses employment as a result of an act constituting a
36 felony in connection with such employment, provided the claimant is duly
37 convicted thereof or has signed a statement admitting that he or she has
38 committed such an act. Determinations regarding a benefit claim may be
39 reviewed at any time. Any benefits paid to a claimant prior to a deter-
40 mination that the claimant has lost employment as a result of such act
41 shall not be considered to have been accepted by the claimant in good
42 faith. In addition, remuneration paid to the claimant by the affected
43 employer prior to the claimant's loss of employment due to such criminal
44 act may not be utilized for the purpose of establishing entitlement to a
45 subsequent, valid original claim. The provisions of this subdivision
46 shall apply even if the employment lost as a result of such act is not
47 the claimant's last employment prior to the filing of his or her claim.

48 § 21. Subdivisions 1 and 2 of section 594 of the labor law, as amended
49 by section 16 of part 0 of chapter 57 of the laws of 2013, are amended
50 to read as follows:

51 (1) A claimant who has wilfully made a false statement or represen-
52 tation to obtain any benefit under the provisions of this article shall
53 forfeit benefits for at least the first ~~[four]~~ one but not more than the
54 first ~~[eighty]~~ twenty effective ~~[days]~~ weeks following discovery of such
55 offense for which he or she otherwise would have been entitled to

1 receive benefits. Such penalty shall apply only once with respect to
2 each such offense.

3 (2) For the purpose of subdivision four of section five hundred ninety
4 of this article, the claimant shall be deemed to have received benefits
5 for such forfeited effective [~~days~~] weeks.

6 § 22. Subdivision 1 of section 596 of the labor law, as amended by
7 chapter 204 of the laws of 1982, is amended to read as follows:

8 1. Claim filing and certification to unemployment. A claimant shall
9 file a claim for benefits at the local state employment office serving
10 the area in which he was last employed or in which he resides within
11 such time and in such manner as the commissioner shall prescribe. He
12 shall disclose whether he owes child support obligations, as hereafter
13 defined. If a claimant making such disclosure is eligible for benefits,
14 the commissioner shall notify the state or local child support enforce-
15 ment agency, as hereafter defined, that the claimant is eligible.

16 A claimant shall correctly report any [~~days~~] weeks of employment and
17 any compensation he received for such employment, including employments
18 not subject to this article, and the [~~days-on~~] weeks during which he was
19 totally unemployed or partially unemployed and shall make such reports
20 in accordance with such regulations as the commissioner shall prescribe.

21 § 23. Subdivision 4 of section 596 of the labor law, as added by chap-
22 ter 705 of the laws of 1944, as renumbered by section 148-a of part B of
23 chapter 436 of the laws of 1997 and such section as renumbered by chap-
24 ter 663 of the laws of 1946, is amended to read as follows:

25 4. Registration and reporting for work. A claimant shall register as
26 totally unemployed or partially unemployed at a local state employment
27 office serving the area in which he was last employed or in which he
28 resides in accordance with such regulations as the commissioner shall
29 prescribe. After so registering, such claimant shall report for work at
30 the same local state employment office or otherwise give notice of the
31 continuance of his unemployment as often and in such manner as the
32 commissioner shall prescribe.

33 § 24. Paragraph (a) of subdivision 2 of section 599 of the labor law,
34 as amended by chapter 593 of the laws of 1991, is amended to read as
35 follows:

36 (a) Notwithstanding any other provision of this chapter, a claimant
37 attending an approved training course or program under this section may
38 receive additional benefits of up to [~~one hundred four~~] twenty-six
39 effective [~~days~~] weeks following exhaustion of regular and, if in
40 effect, any other extended benefits, provided that entitlement to a new
41 benefit claim cannot be established. Certification of continued satis-
42 factory participation and progress in such training course or program
43 must be submitted to the commissioner prior to the payment of any such
44 benefits. The duration of such additional benefits shall in no case
45 exceed twice the number of effective [~~days~~] weeks of regular benefits to
46 which the claimant is entitled at the time the claimant is accepted in,
47 or demonstrates application for appropriate training.

48 § 25. The opening paragraph and paragraph (e) of subdivision 2 of
49 section 601 of the labor law, as amended by chapter 35 of the laws of
50 2009, are amended to read as follows:

51 Extended benefits shall be payable to a claimant for effective [~~days~~]
52 weeks occurring [~~in any week~~] within an eligibility period, provided the
53 claimant

54 (e) is not claiming benefits pursuant to an interstate claim filed
55 under the interstate benefit payment plan in a state where an extended
56 benefit period is not in effect, except that this condition shall not

1 apply with respect to the first [~~eight~~ two] effective [~~days~~ weeks] for
2 which extended benefits shall otherwise be payable pursuant to an inter-
3 state claim filed under the interstate benefit payment plan; and

4 § 26. Paragraphs (b) and (c) of subdivision 3 of section 601 of the
5 labor law, as amended by chapter 35 of the laws of 2009, are amended to
6 read as follows:

7 (b) for not more than [~~fifty-two~~ thirteen] effective [~~days~~ weeks] with
8 respect to his or her applicable benefit year, with a total maximum
9 amount equal to fifty percentum of the total maximum amount of regular
10 benefits payable in such benefit year, and

11 (c) if a claimant's benefit year ends within an extended benefit peri-
12 od, the remaining balance of extended benefits to which he or she would
13 be entitled, if any, shall be reduced by the number of effective [~~days~~ weeks]
14 weeks for which he or she was entitled to receive trade readjustment
15 allowances under the federal trade act of nineteen hundred seventy-four
16 during such benefit year, and

17 § 27. Subdivision 4 of section 601 of the labor law, as amended by
18 chapter 35 of the laws of 2009, is amended to read as follows:

19 4. Charging of extended benefits. The provisions of paragraph (e) of
20 subdivision one of section five hundred eighty-one of this article shall
21 apply to benefits paid pursuant to the provisions of this section, and
22 if they were paid for effective [~~days-occurring-in~~] weeks following the
23 end of a benefit year, they shall be deemed paid with respect to that
24 benefit year. However, except for governmental entities as defined in
25 section five hundred sixty-five and Indian tribes as defined in section
26 five hundred sixty-six of this article, only one-half of the amount of
27 such benefits shall be debited to the employers' account; the remainder
28 thereof shall be debited to the general account, and such account shall
29 be credited with the amount of payments received in the fund pursuant to
30 the provisions of the federal-state extended unemployment compensation
31 act. Notwithstanding the foregoing, where the state has entered an
32 extended benefit period triggered pursuant to subparagraph one of para-
33 graph (a) of subdivision one of this section for which federal law
34 provides for one hundred percent federal sharing of the costs of bene-
35 fits, all charges shall be debited to the general account and such
36 account shall be credited with the amount of payments received in the
37 fund pursuant to the provisions of the federal-state extended unemploy-
38 ment compensation act or other federal law providing for one hundred
39 percent federal sharing for the cost of such benefits.

40 § 28. Paragraph (b) of subdivision 5 of section 601 of the labor law,
41 as amended by chapter 35 of the laws of 2009, is amended to read as
42 follows:

43 (b) No [~~days~~ weeks] of total unemployment or partial unemployment
44 shall be deemed to occur [~~in-any-week~~] within an eligibility period
45 during which a claimant fails to accept any offer of suitable work or
46 fails to apply for suitable work to which he or she was referred by the
47 commissioner, who shall make such referral if such work is available, or
48 during which he or she fails to engage actively in seeking work by
49 making a systematic and sustained effort to obtain work and providing
50 tangible evidence of such effort, and until he or she has worked in
51 employment during at least four subsequent weeks and earned remuneration
52 of at least four times his or her benefit rate.

53 § 29. Paragraph (e) of subdivision 5 of section 601 of the labor law,
54 as amended by chapter 35 of the laws of 2009, is amended to read as
55 follows:

1 (e) No [~~days~~] weeks of total unemployment or partial unemployment
2 shall be deemed to occur [~~in any week~~] within an eligibility period
3 under section five hundred ninety-three of this article, until he or she
4 has subsequently worked in employment in accordance with the require-
5 ments set forth in section five hundred ninety-three of this article.

6 § 30. Section 603 of the labor law, as amended by section 21 of part O
7 of chapter 57 of the laws of 2013, is amended to read as follows:

8 § 603. Definitions. For purposes of this title: "Total unemployment"
9 shall mean the total lack of any employment [~~on any day~~] during any week
10 and "partial unemployment" shall mean any employment during any week
11 that is less than full-time employment so long as the compensation paid
12 is less than the claimant's weekly benefit rate plus the claimant's
13 partial benefit credit, other than with an employer applying for a
14 shared work program. "Work force" shall mean the total work force, a
15 clearly identifiable unit or units thereof, or a particular shift or
16 shifts. The work force subject to reduction shall consist of no less
17 than two employees.

18 § 31. This act shall take effect immediately, provided that the amend-
19 ments to subdivision 1 of section 591 of the labor law made by section
20 twelve of this act shall be subject to the expiration and reversion of
21 such subdivision pursuant to section 10 of chapter 413 of the laws of
22 2003, as amended, when upon such date the provisions of section thirteen
23 of this act shall take effect; provided further that the amendments to
24 section 591-a of the labor law made by section fifteen of this act shall
25 not affect the repeal of such section and shall be deemed repealed ther-
26 ewith.