STATE OF NEW YORK

446

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

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:

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

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

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 Section 523 of the labor law is REPEALED and a new section 523 is added to read as follows:

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

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

§ 525. Partial benefit credit. "Partial benefit credit" means that part of the compensation, if any, paid to a claimant with respect to a week for which benefits are claimed under the provisions of this law which is not in excess of fifty per centum of the individual's weekly

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

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benefit rate, or one hundred dollars, whichever is the greater. Such partial benefit credit, if not a multiple of one dollar, shall be computed to the next higher multiple of one dollar.

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Unemployment. Benefits, except as provided in section five hundred ninety-one-a of this title, shall be paid only to a claimant who is totally unemployed **or partially unemployed** and who is unable to engage in his usual employment or in any other for which he is reasonably fitted by training and experience. A claimant who is receiving benefits under this article shall not be denied such benefits pursuant to this subdivision or to subdivision two of this section because of such claimant's service on a grand or petit jury of any state or of the United States.

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

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

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

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

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

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

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

2. Concurrent payments prohibited. No [~~**days**~~] **weeks** of total unemployment **or partial 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.

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

(a) No [~~**days**~~] **weeks** of total unemployment **or partial unemployment** shall be deemed to occur after a claimant's voluntary separation without good cause from employment until he or she has subsequently worked in employment and earned remuneration at least equal to ten times his or her weekly benefit rate. In addition to other circumstances that may be found to constitute good cause, including a compelling family reason as set forth in paragraph (b) of this subdivision, voluntary separation from employment shall not in itself disqualify a claimant if circumstances have developed in the course of such employment that would have justified the claimant in refusing such employment in the first instance

under the terms of subdivision two of this section or if the claimant, pursuant to an option provided under a collective bargaining agreement or written employer plan which permits waiver of his or her right to retain the employment when there is a temporary layoff because of lack of work, has elected to be separated for a temporary period and the employer has consented thereto.

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

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

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

3. Misconduct. No [~~days~~] **weeks** of total unemployment **or partial 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 ten times his or her weekly benefit rate.

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

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

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

(1) A claimant who has wilfully made a false statement or representation to obtain any benefit under the provisions of this article shall

forfeit benefits for at least the first [~~four~~] one but not more than the first [~~eighty~~] twenty effective [~~days~~] weeks following discovery of such offense for which he or she otherwise would have been entitled to receive benefits. Such penalty shall apply only once with respect to each such offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Charging of extended benefits. The provisions of paragraph (e) of subdivision one of section five hundred eighty-one of this article shall apply to benefits paid pursuant to the provisions of this section, and if they were paid for effective [~~days occurring in~~] weeks following the end of a benefit year, they shall be deemed paid with respect to that benefit year. However, except for governmental entities as defined in section five hundred sixty-five and Indian tribes as defined in section five hundred sixty-six of this article, only one-half of the amount of such benefits shall be debited to the employers' account; the remainder thereof shall be debited to the general account, and such 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. Notwithstanding the foregoing, where the state has entered an extended benefit period triggered pursuant to subparagraph one of paragraph (a) of subdivision one of this section for which federal law provides for one hundred percent federal sharing of the costs of benefits, all charges shall be debited to the general account and such 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.

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

(b) No [~~days~~] weeks of total unemployment or partial 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.

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

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

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

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

§ 31. This act shall take effect immediately, provided that the amendments to subdivision 1 of section 591 of the labor law made by section twelve of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 10 of chapter 413 of the laws of 2003, as amended, when upon such date the provisions of section thirteen of this act shall take effect; provided further that the amendments to section 591-a of the labor law made by section fifteen of this act shall not affect the repeal of such section and shall be deemed repealed therewith.