STATE OF NEW YORK

5421

2021-2022 Regular Sessions

IN ASSEMBLY

February 16, 2021

Introduced by M. of A. DE LA ROSA -- read once and referred to the Committee on Ways and Means

AN ACT to establish the "excluded worker fund act"; to amend the state finance law, in relation to establishing the excluded worker fund; and to amend the labor law, in relation to establishing the excluded worker program

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

Section 1. This act shall be known and may be cited as the "excluded worker fund act".

§ 2. The state finance law is amended by adding a new section 95-j to read as follows:

§ 95-j. Excluded worker fund. 1. There is hereby established in the joint custody of the commissioner of taxation and finance and the state comptroller a special fund to be known as the "excluded worker fund".

2. All moneys collected as contributions and interest relating to wage replacement to workers and families unable to access traditional worker wage insurance or assistance programs shall be deposited in a bank, trust company or industrial bank designated by the state comptroller. Moneys so deposited shall be credited immediately to the account of the excluded worker fund and shall be used for the purposes set forth in section six hundred forty-four of the labor law. Moneys in such fund may be invested by the state comptroller in accordance with the provisions of section ninety-eight of this article, and shall be used for the purposes specified herein.

3. Moneys of the fund shall be used exclusively for the purpose of providing emergency wage replacement to workers that do not qualify for unemployment insurance or other worker wage assistance programs and to households who have lost a major source of income due to the death or disability of a close household member who could not access unemployment insurance or other worker wage assistance programs. The moneys shall be

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

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paid out of the fund on the audit and warrant of the state comptroller on vouchers certified or approved by such commissioner the duly designated officer. Any balance in such fund shall not lapse at any time but shall remain continuously available for such purposes.

4. Moneys of the fund shall not be used in whole or in part for any purpose or in any manner which (a) would permit its substitution for, or a corresponding reduction in, federal funds that would be available in its absence to finance expenditures for the administration of this article; or (b) would cause the appropriate agency of the United States government to withhold any part of an administrative grant which would otherwise be made.

§ 3. The labor law is amended by adding a new section 591-b to read as follows:

§ 591-b. Excluded worker program. 1. The department is hereby authorized and empowered to establish and operate an excluded worker program as authorized pursuant to section six hundred forty-four of this article.

2. Each excluded worker program applicant shall provide, in such form and at such time as the commissioner may prescribe, at least two of the following:

(a) Primary proof of identity including, but not limited to, a driver's license, motor vehicle ID card number, valid foreign driver's license that includes a photo image of the applicant and which is unexpired or expired for less than twenty-four months of its date of expiration, New York State ID, IDNYC or other New York municipal or county identification card, student ID card, valid unexpired foreign passport issued by the applicant's country of citizenship, or valid unexpired consular identification document issued by a consulate from the applicant's country of citizenship. Nothing contained in this subdivision shall be deemed to preclude the commissioner from approving additional proofs of identity; or

(b) Social security number or, in lieu thereof, an individual taxpayer identification number or a United States citizenship and immigration services number; or

(c) Names and addresses of all employers and/or hiring parties, in and out of the state, for the last eighteen months to the extent that such information is available to the applicant; or

(d) Mailing address and zip code.

3. Application forms for such program shall not state: (a) the documents an applicant used to prove identity; or (b) an applicant's ineligibility for a social security number where applicable; or (c) an applicant's citizenship or immigration status.

4. Any portion of any original documents or copies of documents retained or collected by the department in relation to the excluded worker program application to prove identity, age or fitness or any record that contains the photo image or identifies the social security number, telephone number, place of birth, country of origin, place of employment, school or educational institution attended, source of income, status as a recipient of public benefits, the customer identification number associated with a public utilities account, medical information or disability information of the holder of, or applicant for, such program is not a public record and shall not be disclosed or otherwise made accessible in response to any request for records except:

(a) to the person who is the subject of such records; or

(b) where necessary to comply with a lawful court order, judicial warrant signed by a judge appointed pursuant to article III of the

United States constitution, or subpoena for individual records issued pursuant to the criminal procedure law or the civil practice law and rules.

5. For the purposes of this section, whenever a lawful court order, judicial warrant, or subpoena for individual records properly issued pursuant to the criminal procedure law or the civil practice law and rules is presented to the commissioner, only those records, documents, and information specifically sought by such court order, warrant, or subpoena may be disclosed.

6. Notwithstanding the disclosure of records pursuant to subdivisions four and five of this section, the commissioner shall require any person or entity that receives or has access to records or information from the department to certify to the commissioner, before such receipt or access, that such person or entity shall not:

(a) use such records or information for purposes other than for the administration of the excluded worker program or excluded worker fund; or

(b) disclose such records or information to any other agency or to any employee or agent of any such agency unless such disclosure is pursuant to a cooperative arrangement between city, state and federal agencies and which arrangement disclosure is limited to the specific records or information being sought pursuant to such arrangement and used solely for the administration of the excluded worker program or the excluded worker fund.

§ 4. The labor law is amended by adding a new section 644 to read as follows:

§ 644. Eligibility for excluded worker program. 1. For the purpose of section five hundred ninety-one-b of this article, the term "excluded worker program" means a program under which assistance is available to individuals who reside in the state and:

(a) do not meet the eligibility requirements:

(i) for unemployment insurance benefits as described in this article, including benefits payable to federal civilian employees and to ex-servicemen and servicewomen pursuant to Chapter 85 of the United States Code, and benefits authorized to be used for the self-employment assistance program pursuant to the Federal-State Extended Unemployment Compensation Act of 1970; or

(ii) to receive insurance or assistance payments under any programs provided for under subtitle a of Title II of the federal CARES Act; and

(b) suffered a loss:

(i) of work-related earnings; or

(ii) of one or more major sources of household income due to the death or disability of a close household member on whose income the family depended, during a state of emergency declared by the governor and provided further that no other individual in the household is receiving an allowance under the excluded worker program for the same month for the same reason. Such an allowance shall only be accessed: (A) during a state of emergency as declared by the governor and up to eight months after the state of emergency has been declared; (B) during a time in which the government of the United States has authorized renewal or extension beyond the date of the Pandemic Unemployment Assistance outline in Title II of the CARES Act; (C) up to the last day of the calendar quarter of the emergency period defined in paragraph (1)(B) of section 1135(g) of the federal Social Security Act (42 U.S.C. 1320b-5(g)) and ending on the last day of the calendar quarter in which the last day of such an emergency period occurs; or (D) up to the last

day of any calendar quarter during which the U.S. Bureau of Labor Statistics reports a seasonally adjusted unemployment rate of six percent or more in the state; or

(c) were released from post-arraignment incarceration or detention or from immigration detention on or after October first, two thousand twenty.

2. No individual shall be eligible to receive assistance under the excluded worker program in any month if the gross work related earnings they received in the previous calendar month exceeds two thousand one hundred eighty-two dollars.

3. Proof of eligibility may be established by documentation or, in the absence of documentation, by self-attestation.

(a) The allowance payable to individuals shall be payable in the amount of thirty-three hundred dollars per month, payable monthly from April two thousand twenty-one through December thirty-first, two thousand twenty-one. Payments shall be retroactive to the latter of the first date of earnings loss during the state of emergency or April first, two thousand twenty-one. The total amount paid for any benefit year shall not exceed the maximum amount of benefits payable under this article and Title II of the CARES Act.

(b) Payments shall continue until the later of: (i) December thirty-first, two thousand twenty-one; (ii) the last day of the calendar quarter during which the government of the United States has authorized renewal or extension beyond the date of Pandemic Unemployment Assistance; (iii) the last day of the calendar quarter of the emergency period defined in paragraph (1)(B) of section 1135(g) of the federal Social Security Act (42 U.S.C. 1320b-5(g)) and ending on the last day of the calendar quarter in which the last day of such an emergency period occurs; or (iv) the last day of any calendar quarter during which the U.S. Bureau of Labor Statistics reports a seasonally adjusted unemployment rate of six percent or more in the state.

4. No individual shall be required to apply for assistance under the excluded worker program as a condition of eligibility for any state or local program.

§ 5. This act shall take effect immediately.