

# STATE OF NEW YORK

6666

2021-2022 Regular Sessions

## IN ASSEMBLY

March 24, 2021

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

AN ACT to amend the labor law, in relation to the recovery of overpayments of unemployment benefits; and to repeal 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. The labor law is amended by adding a new section 594-a to  
2 read as follows:

3 § 594-a. Recovery of overpayments. (1) Notwithstanding any provision  
4 of section five hundred ninety-four of this title to the contrary, any  
5 claimant who has received benefits under the provisions of this article  
6 to which they were not entitled shall not be held liable for the amounts  
7 overpaid provided that all of the following conditions exist:

8 (a) Such overpayment was not due to fraud or due to a willful false  
9 statement or misrepresentation;

10 (b) Such overpayment was received without fault on the part of the  
11 claimant; and

12 (c) The recovery of such overpayment would be against equity and good  
13 conscience.

14 (2) Notwithstanding any provision of section five hundred ninety-four  
15 of this title to the contrary, any claimant who has received benefits  
16 paid under any federal unemployment and extended unemployment programs  
17 administered by the department to which they were not entitled shall not  
18 be held liable for the amounts overpaid, to the extent permitted under  
19 federal law, if all of the following conditions exist:

20 (a) Such overpayment was not due to fraud or due to a willful false  
21 statement or misrepresentation;

22 (b) Such overpayment was received without fault on the part of the  
23 claimant; and

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

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1 (c) The recovery of such overpayment would be against equity and good  
2 conscience.

3 (3) When determining whether an overpayment was received without fault  
4 on the part of the claimant, the commissioner shall consider the follow-  
5 ing factors:

6 (a) The nature and cause of such overpayment and the capacity of the  
7 claimant to recognize the error resulting in such overpayment;

8 (b) Whether the claimant knew or reasonably should have known that he  
9 or she was not lawfully entitled to receive such benefits;

10 (c) Whether the benefits were received or retained because of the  
11 claimant's good faith reliance on an administrative or departmental  
12 error; and

13 (d) Whether the claimant negligently reported or failed to report  
14 information which resulted in such overpayment.

15 (4) When determining whether the recovery of any overpayment would be  
16 against equity and good conscience, the commissioner shall consider if  
17 such repayment would impose extraordinary hardship, including financial  
18 hardship, on the claimant or the claimant's household.

19 (5) (a) In the event that a new determination by the commissioner or a  
20 decision by a referee, the appeal board, or a court results in a  
21 decrease or denial of any benefits previously allowed, or at any other  
22 time it has been determined that an overpayment has occurred, the claim-  
23 ant shall be notified in writing, by mail or electronically, within  
24 fifteen days of such determination or decision of his or her right to  
25 appeal such determination or decision and to request a waiver of recov-  
26 ery of such overpayment. Such notice shall include, but shall not be  
27 limited to:

28 (i) The total amount of such overpayment and the cause of such over-  
29 payment;

30 (ii) The schedule of repayment for such amounts overpaid;

31 (iii) The means by which the commissioner is entitled to collect or  
32 recover such overpayment;

33 (iv) An explanation of the claimant's right to appeal such determi-  
34 nation or decision in accordance with the provisions of this article and  
35 any rules and regulations promulgated thereunder;

36 (v) An explanation of the standards by which a claimant shall not be  
37 found liable for the amounts overpaid, as set forth in this section; and

38 (vi) The process by which the claimant may request and obtain a waiver  
39 of recovery of such overpayment.

40 (b) The commissioner shall review each waiver request in a manner  
41 consistent with conditions set forth in subdivisions one and two of this  
42 section to determine whether the claimant shall be held liable for any  
43 amounts overpaid. Any claimant who is found not to be liable for any  
44 amounts overpaid shall be entitled to receive a full waiver of such  
45 overpayment and any penalties and/or interest incurred as a result of  
46 such overpayment.

47 (6) (a) Upon the denial of any waiver request, or upon any other  
48 determination by the commissioner or a decision by a referee, the appeal  
49 board, or a court that a claimant shall be held liable for any overpay-  
50 ment, the claimant shall be notified in writing, by mail or electron-  
51 ically, within fifteen days of such determination or decision. Such  
52 notice shall set forth the reason for such denial, if applicable, and  
53 his or her right to request an adjustment to his or her repayment sched-  
54 ule.

55 (b) The commissioner shall grant an adjustment to the claimant's  
56 repayment schedule if at any time the claimant is able to demonstrate

1 that there has been a material change in his or her financial condition  
2 which warrants such adjustment.

3 § 2. Subdivision 4 of section 597 of the labor law is REPEALED.

4 § 3. This act shall take effect immediately and shall be deemed to  
5 have been in full force and effect on and after March 9, 2020.