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:

Section 1. The labor law is amended by adding a new section 594-a to read as follows:

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

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

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

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

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

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

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

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

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

(3) When determining whether an overpayment was received without fault on the part of the claimant, the commissioner shall consider the following factors:

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

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

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

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

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

(5) (a) In the event that a new determination by the commissioner or a decision by a referee, the appeal board, or a court results in a decrease or denial of any benefits previously allowed, or at any other time it has been determined that an overpayment has occurred, the claimant shall be notified in writing, by mail or electronically, within fifteen days of such determination or decision of his or her right to appeal such determination or decision and to request a waiver of recovery of such overpayment. Such notice shall include, but shall not be limited to:

(i) The total amount of such overpayment and the cause of such overpayment;

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

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

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

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

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

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

(6) (a) Upon the denial of any waiver request, or upon any other determination by the commissioner or a decision by a referee, the appeal board, or a court that a claimant shall be held liable for any overpayment, the claimant shall be notified in writing, by mail or electronically, within fifteen days of such determination or decision. Such notice shall set forth the reason for such denial, if applicable, and his or her right to request an adjustment to his or her repayment schedule.

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

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

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

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