

STATE OF NEW YORK

7511--A

Cal. No. 362

2021-2022 Regular Sessions

IN ASSEMBLY

May 12, 2021

Introduced by M. of A. JOYNER, WOERNER, LAWLER -- read once and referred to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Codes -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the labor law, in relation to waiving repayment of unemployment pandemic benefits under certain circumstances

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 597-a to
2 read as follows:

3 § 597-a. Waiver authority for certain overpayments of pandemic unem-
4 ployment assistance. 1. Definitions. As used in this section:

5 (a) "Unemployment pandemic benefits" or "UPB" means federal unemploy-
6 ment insurance or assistance payments including extended benefits and
7 the first week of regular unemployment insurance made during the period
8 of January twenty-seventh, two thousand twenty through September sixth,
9 two thousand twenty-one.

10 (b) "Without fault" means the claimant has not knowingly supplied or
11 omitted false information, with the intent to receive benefits, which
12 directly resulted in the department issuing UPB to which the claimant
13 was not entitled.

14 (c) "Blanket waiver" means a waiver authorized under federal law,
15 including but not limited to UIPL 20-21 and UIPL 20-21, Change 1 and any
16 and all subsequent waivers that the federal government authorizes states
17 to implement.

18 (d) "Categorical waivers" means a waiver for which the department
19 receives approval after requesting permission to implement from the
20 Federal Department of Labor and/or appropriate federal agency in accord-

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

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1 ance with UIPL 20-21, Change 1, Attachment 2. Upon approval, a categori-
2 cal waiver becomes a blanket waiver.

3 (e) "Individual waiver" means a waiver made available to every claim-
4 ant who has not been approved for a blanket waiver.

5 (f) "Final determination date" means the date thirty days after appeal
6 rights have been exhausted or abandoned.

7 2. Waiver of certain repayments. The department shall review all UPB
8 overpayments to determine eligibility for waivers at the time of the
9 overpayment determination and shall review all previously issued UPB
10 overpayment determinations retroactively to determine eligibility for
11 waivers as described in paragraphs (a), (b) and (c) of this subdivision.
12 The department must complete its review of previously determined over-
13 payments for waiver eligibility within one hundred twenty days of the
14 effective date of this section. Prior to denial of a blanket waiver, as
15 described in paragraphs (a) and (b) of this subdivision, the department
16 must assess all UPB overpayments to determine if claimants are eligible
17 for state unemployment insurance. The department shall assess and
18 approve any subsequent waivers not previously authorized which the
19 federal government authorizes states to implement. There shall be a
20 presumption that claimants are eligible for UPB waivers absent clear and
21 convincing evidence to the contrary.

22 (a) The department shall assess and approve blanket waivers. The
23 department shall proactively identify individuals eligible for a blanket
24 waiver including those who have previously been denied waivers. Notice
25 of a claimant's approval for a blanket waiver must be provided pursuant
26 to subdivision three of this section within fourteen days of the depart-
27 ment's decision to approve the blanket waiver. To the extent that the
28 department has collected benefits for which an overpayment was assessed
29 which are eligible for a blanket waiver, the department must refund
30 benefits to claimants within thirty days of waiver approval.

31 (b) The department shall apply for approval of categorical waivers as
32 listed in this subdivision within thirty days of the effective date of
33 this section. Upon approval of a categorical waiver, such approved waiv-
34 er shall be considered to be a blanket waiver and the requirements for
35 blanket waivers as listed in paragraph (a) of this subdivision shall
36 apply. The department shall request approval for the following categor-
37 ical waivers:

38 (i) all overpayments assessed against educational workers pursuant to
39 subdivisions ten and eleven of section five hundred ninety of this title
40 during calendar year two thousand twenty;

41 (ii) all overpayments assessed because of alleged ineligibility due to
42 immigration status;

43 (iii) all overpayments assessed against the claimant where they
44 received correspondence, forms, or any other documentation in a language
45 that was not their own or in a manner that was inaccessible to the
46 claimant; or due to other similar difficulties (e.g., education, litera-
47 cy, and/or language barriers) in understanding what information the
48 state needed from the claimant to properly determine eligibility;

49 (iv) all overpayments assessed because the claimant filed in the wrong
50 state or there was an incorrectly adjudicated interstate claim; and

51 (v) all overpayments assessed against claimants where receipt of UPB
52 was without fault on the part of the claimant.

53 (c) If an individual is not approved for a blanket waiver, the depart-
54 ment must assess each claimant's eligibility for a waiver individually
55 at the time the overpayment is established. The department shall waive
56 such overpayment repayment if it is determined that the payment of such

1 UPB was without fault on the part of such claimant and such repayment
2 would be contrary to equity and good conscience. There shall be a
3 presumption that the claimant is without fault where the claimant
4 provided incorrect information or failed to provide information and
5 documentation in the following situations:

6 (i) the department provided conflicting, changing, or confusing infor-
7 mation or instructions;

8 (ii) the department took more than six months to implement a federal
9 law regarding proof of eligibility from claimants;

10 (iii) the claimant was unable to reach the department despite their
11 best efforts to inquire or clarify information the individual needed to
12 provide, due to language, education, literacy, disability or other simi-
13 lar barriers;

14 (iv) the claimant was unable to understand the department's notices or
15 directives due to language, education, literacy disability or other
16 similar barriers;

17 (v) the claimant chose a reason for separation which is legally incor-
18 rect; or

19 (vi) the claimant had assistance in filing a claim, certifying, or
20 otherwise responding to the department where the claimant's assistant
21 did not confirm required information with the claimant or misunderstood
22 such information provided by the claimant.

23 (d) There shall be a presumption that the payment of UPB is without
24 fault if the overpayment was due to department error or mistake or the
25 employer provided incorrect or untimely information. Receipt of the
26 Unemployment Insurance Claimant Handbook shall not create a presumption
27 that the claimant was on notice of its contents and such receipt shall
28 not be used against the claimant on points of fact or law.

29 (e) For purposes of this section it shall be considered to be "contra-
30 ry to equity and good conscience" where any one or a combination of the
31 following apply:

32 (i) recovery would cause financial hardship to the person from whom it
33 is sought;

34 (ii) the recipient of the overpayment can show, regardless of their
35 financial situation, that repayment would cause them to relinquish a
36 valuable right or change their position for the worse including but not
37 limited to signing a lease, taking out a loan, or passing up state or
38 federal assistance in reliance on receipt of UPB;

39 (iii) where the individual or their household is in receipt of Social
40 Security Income, Supplemental Security Income, Social Security Disabili-
41 ty, Medicaid, Medicare, free or reduced public school lunch, Family
42 Investment Program, temporary assistance, Supplement Nutrition Assist-
43 ance Program benefits (SNAP), nutrition benefits provided as part of the
44 Special Supplemental Nutrition Program for Women, Infants and Children
45 (WIC), Home Energy Assistance Program benefits, Senior Citizen Rent
46 Increase Exemption, Disability Rent Increase Exemption, rental subsidy
47 pursuant to Section 8 of the Housing Act of 1937 and/or state law, or is
48 at or below four hundred percent of the federal poverty guidelines, or
49 is living in project-based subsidized housing and any substantially
50 equivalent successor program to the aforementioned benefits programs;

51 (iv) where the individual used the unemployment benefits to meet their
52 ordinary living expenses including but not limited to food, rent,
53 medical costs and/or insurance, dental bills and/or insurance, school
54 loans, school fees, utilities, childcare, mortgage payments, transporta-
55 tion, purchase or maintenance of a car or equipment needed for employ-
56 ment or self-employment, or operating expenses for self-employment;

1 (v) where the department made programming, technological or automated
2 system errors or where individuals relied upon the department's publi-
3 cized information later determined to be erroneous;

4 (vi) where representatives and/or agents of the department provided
5 information, upon which individuals relied or omitted information, which
6 resulted in an overpayment;

7 (vii) where the department failed to determine a non-monetary issue
8 within twenty-one days after the department had notice of the issue;

9 (viii) where the department reversed a decision regarding a claimant's
10 eligibility more than thirty days after the initial determination;

11 (ix) where the department failed to communicate with an employer, the
12 claimant, and/or other relevant parties including but not limited to
13 federal, state or territorial government entities, prior to awarding
14 unemployment benefits;

15 (x) where the department failed to communicate with the claimant in a
16 manner or format inaccessible to the individual;

17 (xi) where a decision on a hearing that resulted in an overpayment
18 being assessed was issued more than thirty days after the first unem-
19 ployment benefit payment;

20 (xii) where the overpayment is based on unemployment claims that were
21 opened during a period when the department failed to send notices within
22 thirty days to employers of claimants having applied for benefits;

23 (xiii) where there is any other reason for which recovery of the over-
24 payment would be against equity and good conscience under the circum-
25 stances;

26 (xiv) where it would be unfair to require repayment;

27 (xv) where requiring repayment now would undermine an individual's
28 financial stability and the purposes for which the benefits were paid;
29 and/or

30 (xvi) where recovery would be unconscionable under the circumstances.

31 (f) The department shall provide claimants, who have previously been
32 denied waivers with applications for individual waivers within sixty
33 days of the effective date of this section. To the extent that the
34 department has collected benefits for which an overpayment was assessed
35 which are eligible for an individual waiver, the department must refund
36 benefits to claimants within thirty days of waiver approval.

37 3. (a) The department shall notify each claimant with an overpayment
38 of the following:

39 (i) the total amount of such overpayment and the cause of such over-
40 payment;

41 (ii) the amount of the overpayment that is waived and the reason why
42 some or all of the overpayment was not waived;

43 (iii) the availability of a ten-year period to repay the overpayment;

44 (iv) the means by which the commissioner is entitled to collect or
45 recover such overpayment;

46 (v) an explanation of the claimant's right to appeal such determi-
47 nation or decision in accordance with the provisions of this title and
48 any rules and regulations promulgated thereunder;

49 (vi) an explanation of the standards by which an overpayment can be
50 waived as set forth in this section; and

51 (vii) the process by which the claimant may request and obtain an
52 individual waiver of recovery of such overpayment.

53 (b) A copy of the application for individual waivers must be sent with
54 the notification described herein.

55 (c) A claimant who is dissatisfied with a determination regarding a
56 waiver may, within sixty days after receipt of notice of the determi-

1 nation, request a hearing. Overpayment claimants shall have all the
2 appeals rights provided by title eight of this article except that
3 referees may extend the time fixed for requesting a hearing upon good
4 cause shown.

5 4. The department shall develop and implement a process, within thirty
6 days of the effective date of this section, by which claimants may
7 request and obtain an individual waiver application by phone, fax, mail,
8 or through the department's two-way communication system. All notifica-
9 tions shall be translated into the ten most commonly spoken languages in
10 New York state. Any notice not fully translated into one of these
11 languages must be accompanied by a notice informing the recipient of
12 where they may seek translation and other assistance as provided by the
13 department.

14 5. Any funds recouped or repaid prior to the granting of these waivers
15 shall be returned to the individual within thirty days of the waiver
16 being granted.

17 6. The department shall ensure that no overpayments are or have been
18 established based on a redetermination more than one year after the
19 first date for which benefits are paid.

20 7. (a) The department shall not pursue or continue collection activity
21 prior to a final determination regarding the overpayment and that a
22 claimant is ineligible for any waiver.

23 (b) Where an overpayment waiver is denied, claimants shall have up to
24 ten years to repay overpayments. Upon a showing of the claimant's
25 inability to repay, the ten-year period shall be extended to an indefi-
26 nite period as long as the claimant can make a minimum payment of five
27 dollars per month. Offsets shall be limited to three years.

28 8. The department shall report publicly on its website on a quarterly
29 basis the following information by race, gender, ethnicity, and
30 language: the number of overpayment notifications it sent to claimants,
31 the number of waiver requests received, the number of waiver requests
32 granted, the number of waiver requests denied and, if denied, the
33 reasons for denying each waiver request.

34 § 2. Subdivision 4 of section 597 of the labor law, as amended by
35 chapter 61 of the laws of 1998, is amended and a new subdivision 5 is
36 added to read as follows:

37 4. Effect of review. Whenever a new determination in accordance with
38 the preceding subdivision or a decision by a referee, the appeal board,
39 or a court results in a decrease or denial of benefits previously
40 allowed, such new determination or decision, unless it shall be based
41 upon a retroactive payment of remuneration, shall not affect the rights
42 to any benefits already paid under the authority of the prior determi-
43 nation or decision provided they were accepted by the claimant in good
44 faith and the claimant did not make [~~any~~] a willful false statement or
45 representation and did not [~~wilfully~~] willfully conceal any pertinent
46 fact in connection with his or her claim for benefits.

47 5. The term "willful" as it is used in this section shall mean the
48 claimant intentionally and deliberately supplied or omitted false infor-
49 mation which directly resulted in the department issuing benefits to
50 which the claimant knew they were not entitled.

51 § 3. This act shall take effect immediately and shall apply to all
52 pandemic unemployment assistance repayments assessed on or after March
53 27, 2020.