STATE OF NEW YORK

7148

2021-2022 Regular Sessions

IN SENATE

June 2, 2021

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the labor law, in relation to the calculation of weekly employment insurance benefits for certain workers; to amend a chapter of the laws of 2021 amending the labor law relating to the calculation of weekly employment insurance benefits for workers who are partially unemployed, as proposed in legislative bills numbers S. 1042-A and A. 2355-A, in relation to the effectiveness thereof; and to repeal certain provisions of the labor law relating thereto

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

Section 1. Section 524 of the labor law, as added by chapter 5 of the laws of 2000, is amended to read as follows:

§ 524. Week of employment. For purposes of this article, "week of employment" shall mean a Monday through Sunday period during which a claimant was paid remuneration for employment for an employer or employers liable for contributions or for payments in lieu of contributions under this article. **A claimant who is employed on a shift continuing through midnight is deemed to have been employed on the day beginning before midnight with respect to such shift, except where night shift employees are regularly scheduled to start their work week at seven post meridiem or thereafter on Sunday night, their regularly scheduled starting time on Sunday shall be considered as starting on Monday.**

§ 2. Subparagraph 2 of paragraph (e) of subdivision 1 of section 581 of the labor law, as amended by a chapter of the laws of 2021 amending the labor law relating to the calculation of weekly employment insurance benefits for workers who are partially unemployed, as proposed in legislative bills numbers S. 1042-A and A. 2355-A, 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

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

LBD11768-01-1

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 seven effective weeks of benefits paid~~] **in an amount equal to the benefit paid for seven weeks of total employment** 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 seven effective weeks of benefits paid~~] **in an amount equal to the benefit paid for seven weeks of total employment** 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 seven effective weeks of benefits~~] **an amount equal to the benefit paid for seven weeks of total employment** 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 seven effective weeks of benefits~~] **in an amount equal to the benefit paid for seven weeks of total employment** 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 seven effective weeks of benefits~~] **in an amount equal to the benefit paid for seven weeks of total employment** 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 seven effective weeks of benefits~~] **in an amount equal to the benefit paid for seven weeks of total employment** 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.

§ 3. Paragraph (d) of subdivision 5 of section 590 of the labor law is REPEALED.

§ 4. Subdivision 1 of section 591 of the labor law, as amended by section 12 of a chapter of the laws of 2021 amending the labor law relating to the calculation of weekly employment insurance benefits for workers who are partially unemployed, as proposed in legislative bills numbers S. 1042-A and A. 2355-A, 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.

§ 5. Subdivision 1 of section 591 of the labor law, as amended by section 13 of a chapter of the laws of 2021 amending the labor law relating to the calculation of weekly employment insurance benefits for workers who are partially unemployed, as proposed in legislative bills numbers S. 1042-A and A. 2355-A, 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.

§ 6. Paragraph (a) of subdivision 3 of section 591 of the labor law, as added by a chapter of the laws of 2021 amending the labor law relating to the calculation of weekly employment insurance benefits for workers who are partially unemployed, as proposed in legislative bills numbers S. 1042-A and A. 2355-A, is amended 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 **and shall be included in the calculation of a claimant's benefit for partial unemployment as set forth in subdivision five of section five hundred ninety of this article**.

§ 7. Paragraph (a) of subdivision 6 of section 591 of the labor law, as added by section 13 of part O of chapter 57 of laws of 2013, is amended to read as follows:

(a) No benefits shall be payable to a claimant for any week during a dismissal period for which a claimant receives dismissal pay[~~, nor shall any day within such week be considered a day of total unemployment under section five hundred twenty-two of this article,~~] if such weekly dismissal pay exceeds the **claimant's** maximum weekly benefit rate **plus the claimant's partial benefit credit**.

§ 8. Subparagraph (i) of paragraph (b) of subdivision 2 of section 591-a of the labor law, as amended by a chapter of the laws of 2021 amending the labor law relating to the calculation of weekly employment insurance benefits for workers who are partially unemployed, as proposed in legislative bills numbers S. 1042-A and A. 2355-A, 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;

§ 9. Subparagraph (ii) of paragraph (b) of subdivision 2 of section 591-a of the labor law, as added by chapter 413 of the laws of 2003, is amended to read as follows:

(ii) requirements relating to disqualifying income, as set forth in [~~section~~] **sections** five hundred [~~twenty-three~~] **twenty-five and five hundred ninety** of this article, are not applicable to income earned from self-employment entered into by such individuals as a result of their

participation in self-employment assistance programs as defined in this section; and

§ 10. Subdivision 1 of section 596 of the labor law, as amended by a chapter of the laws of 2021 amending the labor law relating to the calculation of weekly employment insurance benefits for workers who are partially unemployed, as proposed in legislative bills numbers S. 1042-A and A. 2355-A, 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~~] **The claimant** shall disclose whether he **or she** 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 weeks of employment and any compensation [~~he~~] received for such employment, including [~~employments~~] **employment** not subject to this article, and the weeks during which he **or she** was totally unemployed or partially unemployed and shall make such reports in accordance with such regulations as the commissioner shall prescribe.

§ 11. Subdivision 4 of section 596 of the labor law, as amended by a chapter of the laws of 2021 amending the labor law relating to the calculation of weekly employment insurance benefits for workers who are partially unemployed, as proposed in legislative bills numbers S. 1042-A and A. 2355-A, 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~~] **with the department** 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~~] **continued total or partial** unemployment as often and in such manner as the commissioner shall prescribe.

§ 12. Paragraph (a) of subdivision 2 of section 599 of the labor law, as amended by a chapter of the laws of 2021 amending the labor law relating to the calculation of weekly employment insurance benefits for workers who are partially unemployed, as proposed in legislative bills numbers S. 1042-A and A. 2355-A, 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 twenty-six [~~effective weeks~~] **times his or her weekly benefit amount** 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~~] **amount** of such additional benefits shall in no case exceed twice the [~~number of effective weeks~~] **amount** of regular benefits to which the claimant is entitled at the time the claimant is accepted in, or demonstrates application for appropriate training.

§ 13. Paragraphs (b) and (c) of subdivision 3 of section 601 of the labor law, as amended by a chapter of the laws of 2021 amending the

labor law relating to the calculation of weekly employment insurance benefits for workers who are partially unemployed, as proposed in legislative bills numbers S. 1042-A and A. 2355-A, is amended to read as follows:

(b) for not more than [~~thirteen effective 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 weeks~~] amount of benefits 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

§ 14. A chapter of the laws of 2021 amending the labor law relating to the calculation of weekly employment insurance benefits for workers who are partially unemployed, as proposed in legislative bills numbers S. 1042-A and A. 2355-A, is amended by adding two new sections 31 and 32 to read as follows:

§ 31. Notwithstanding any other provision of law to the contrary, unemployment benefits payable pursuant to article 18 of the labor law shall be payable in cases of partial work in the following manner:

1. Days of total unemployment.

(a) For the purpose of calculating the number of effective days in a week to determine a claimant's weekly benefit entitlement in accordance with labor law section 590, a claimant shall experience a "day of total unemployment" or "full day of total unemployment" on each day that is not a day of employment.

(b) The total number of "day(s) of employment" in a week shall be calculated by adding the total number of hours worked in a week of employment, provided however that no hours in excess of 10 hours are included per calendar day, dividing the total number of hours by 10, and rounding up to the nearest whole number. If the total number of hours worked in a week is less than or equal to 10 hours, no day of employment shall have occurred. A claimant who works an amount greater than 10 hours but not more than 16 hours in a week shall be deemed to have engaged in one day of employment. A claimant who works an amount greater than 16 hours but not more than 21 hours in a week shall be deemed to have engaged in two days of employment. A claimant who works an amount greater than 21 hours but not more than 30 hours in a week shall be deemed to have engaged in three days of employment. A claimant who works an amount greater than 30 hours in a week shall be deemed to have engaged in four days of employment.

(c) A claimant who is employed on a shift continuing through midnight is deemed to have been employed on the day beginning before midnight with respect to such shift, except where night shift employees are regularly scheduled to start their work week at seven post meridiem or thereafter on a Sunday night, their regularly scheduled starting time on Sunday shall be considered as starting on Monday.

§ 32. Severability. If any amendment contained in a clause, sentence, paragraph, section or part of this act shall be adjudged by the United States Department of Labor to violate requirements for maintaining benefit standards required of the state in order to be eligible for any financial benefit offered through federal law or regulation, such amendments shall be severed from this act and shall not affect, impair or invalidate the remainder thereof.

§ 15. Section 31 of a chapter of the laws of 2021 amending the labor law relating to the calculation of weekly employment insurance benefits for workers who are partially unemployed, as proposed in legislative bills numbers S. 1042-A and A. 2355-A, is amended to read as follows:

§ [~~31.~~] 33. This act shall take effect on the thirtieth day after it shall have become a law; provided, however, that sections one through thirty of this act shall take effect on April 1, 2022 or thirty days after the commissioner of labor certifies that the department of labor has an information technology system capable of accommodating the amendments in this act, whichever occurs earlier; provided that section thirty-one of this act shall take effect on the thirtieth day after it shall have become a law and shall be applicable to new claims on such date and thereafter and shall be deemed repealed on the same date as the remaining provisions of this act take effect. In a manner consistent with the provisions of this section, the commissioner of labor shall notify the legislative bill drafting commission upon issuing his or her certification in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effecting the provisions of section 44 of the legislative law and section 70-b of the public officers law, and provided further 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.

§ 16. This act shall take effect immediately; provided that sections one through fourteen of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the labor law relating to the calculation of weekly employment insurance benefits for workers who are partially unemployed, as proposed in legislative bills numbers S. 1042-A and A. 2355-A, takes effect; provided, however, that the amendments to subdivision 1 of section 591 of the labor law made by section four 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 five of this act shall take effect; and provided, further, that the amendments to section 591-a of the labor law made by sections eight and nine of this act shall not affect the expiration and repeal of such section and shall expire and be deemed repealed therewith.