

# STATE OF NEW YORK

7959

2021-2022 Regular Sessions

## IN ASSEMBLY

June 3, 2021

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

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.

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1 the last employer prior to the filing of a valid original claim in an  
2 amount equal to seven times the claimant's benefit rate. Thereafter,  
3 such charges shall be made to the account of each employer in the base  
4 period used to establish the valid original claim in the same proportion  
5 that the remuneration paid by each employer to the claimant during that  
6 base period bears to the remuneration paid by all employers to the  
7 claimant during that base period except as provided below:

8 (i) In those instances where the claimant may not utilize wages paid  
9 to establish entitlement based upon subdivision ten of section five  
10 hundred ninety of this article and an educational institution is the  
11 claimant's last employer prior to the filing of the claim for benefits,  
12 or the claimant performed services in such educational institution in  
13 such capacity while employed by an educational service agency which is  
14 the claimant's last employer prior to the filing of the claim for bene-  
15 fits, such employer shall not be liable for benefit charges [~~for the~~  
16 ~~first seven effective weeks of benefits paid~~] in an amount equal to the  
17 benefit paid for seven weeks of total employment as otherwise provided  
18 by this section. Under such circumstances, benefits paid shall be  
19 charged to the general account. In addition, wages paid during the base  
20 period by such educational institutions, or for services in such educa-  
21 tional institutions for claimants employed by an educational service  
22 agency shall not be considered base period wages during periods that  
23 such wages may not be used to gain entitlement to benefits pursuant to  
24 subdivision ten of section five hundred ninety of this article.

25 (ii) In those instances where the claimant may not utilize wages paid  
26 to establish entitlement based upon subdivision eleven of section five  
27 hundred ninety of this article and an educational institution is the  
28 claimant's last employer prior to the filing of the claim for benefits,  
29 or the claimant performed services in such educational institution in  
30 such capacity while employed by an educational service agency which is  
31 the claimant's last employer prior to the filing of the claim for bene-  
32 fits, such employer shall not be liable for benefit charges [~~for the~~  
33 ~~first seven effective weeks of benefits paid~~] in an amount equal to the  
34 benefit paid for seven weeks of total employment as otherwise provided  
35 by this section. Under such circumstances, benefits paid will be charged  
36 to the general account. In addition, wages paid during the base period  
37 by such educational institutions, or for services in such educational  
38 institutions for claimants employed by an educational service agency  
39 shall not be considered base period wages during periods that such wages  
40 may not be used to gain entitlement to benefits pursuant to subdivision  
41 eleven of section five hundred ninety of this article. However, in those  
42 instances where a claimant was not afforded an opportunity to perform  
43 services for the educational institution for the next academic year or  
44 term after reasonable assurance was provided, such employer shall be  
45 liable for benefit charges as provided for in this paragraph for any  
46 retroactive payments made to the claimant.

47 (iii) In those instances where the federal government is the claim-  
48 ant's last employer prior to the filing of the claim for benefits and  
49 such employer is not a base-period employer, payments equaling [~~the~~  
50 ~~first seven effective weeks of benefits~~] an amount equal to the benefit  
51 paid for seven weeks of total employment as otherwise prescribed by this  
52 section shall be charged to the general account. In those instances  
53 where the federal government is the claimant's last employer prior to  
54 the filing of the claim for benefits and a base-period employer, such  
55 employer shall be liable for charges for all benefits paid on such claim  
56 in the same proportion that the remuneration paid by such employer

1 during the base period bears to the remuneration paid by all employers  
2 during the base period. In addition, benefit payment charges [~~for the~~  
3 ~~first seven effective weeks of benefits~~] in an amount equal to the bene-  
4 fit paid for seven weeks of total employment other than those chargeable  
5 to the federal government as prescribed above shall be made to the  
6 general account.

7 (iv) In those instances where a combined wage claim is filed pursuant  
8 to interstate reciprocal agreements and the claimant's last employer  
9 prior to the filing of the claim is an out-of-state employer and such  
10 employer is not a base-period employer, benefit payments [~~equaling the~~  
11 ~~first seven effective weeks of benefits~~] in an amount equal to the bene-  
12 fit paid for seven weeks of total employment as otherwise prescribed by  
13 this section shall be charged to the general account. In those instances  
14 where the out-of-state employer is the last employer prior to the filing  
15 of the claim for benefits and a base-period employer such employer shall  
16 be liable for charges for all benefits paid on such claim in the same  
17 proportion that the remuneration paid by such employer during the base  
18 period bears to the remuneration paid by all employers during the base  
19 period. In addition, benefit payment charges [~~for the seven effective~~  
20 ~~weeks of benefits~~] in an amount equal to the benefit paid for seven  
21 weeks of total employment other than those chargeable to the out-of-  
22 state employer as prescribed above shall be made to the general account.

23 (v) In those instances where the last employer prior to the filing of  
24 a valid original claim has paid total remuneration to the claimant  
25 during the period from the start of the base period used to establish  
26 the benefit claim until the date of the claimant's filing of the valid  
27 original claim in an amount less than or equal to six times the claim-  
28 ant's benefit rate and the last employer has substantiated such amount  
29 to the satisfaction of the commissioner within ten days of the commis-  
30 sioner's original notice of potential charges to such last employer's  
31 account, benefits shall be charged as follows: benefits payable to the  
32 claimant with respect to the claimant's then current benefit year shall  
33 be charged, when paid, to the account of such last employer prior to the  
34 filing of a valid original claim in an amount equal to the lowest whole  
35 number (one, two, three, four, five, or six) times the claimant's bene-  
36 fit rate where the product of such lowest whole number times the claim-  
37 ant's benefit rate is equal to or greater than such total remuneration  
38 paid by such last employer to the claimant. Thereafter, such charges  
39 shall be made to the account of each employer in the base period used to  
40 establish the valid original claim in the same proportion that the  
41 remuneration paid by each employer to the claimant during that base  
42 period bears to the remuneration paid by all employers to the claimant  
43 during that base period. Notice of such recalculation of potential  
44 charges shall be given to the last employer and each employer of the  
45 claimant in the base period used to establish the valid original claim.

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

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

53 1. Unemployment. Benefits, except as provided in section five hundred  
54 ninety-one-a of this title, shall be paid only to a claimant who is  
55 totally unemployed or partially unemployed [~~and who is unable to engage~~  
56 ~~in his usual employment or in any other for which he is reasonably~~

1 ~~fitted by training and experience~~]. A claimant who is receiving benefits  
2 under this article shall not be denied such benefits pursuant to this  
3 subdivision or to subdivision two of this section because of such claim-  
4 ant's service on a grand or petit jury of any state or of the United  
5 States.

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

11 1. Unemployment. Benefits shall be paid only to a claimant who is  
12 totally unemployed or partially unemployed [~~and who is unable to engage~~  
13 ~~in his usual employment or in any other for which he is reasonably~~  
14 ~~fitted by training and experience~~]. A claimant who is receiving benefits  
15 under this article shall not be denied such benefits pursuant to this  
16 subdivision or to subdivision two of this section because of such claim-  
17 ant's service on a grand or petit jury of any state or of the United  
18 States.

19 § 6. Paragraph (a) of subdivision 3 of section 591 of the labor law,  
20 as added by a chapter of the laws of 2021 amending the labor law relat-  
21 ing to the calculation of weekly employment insurance benefits for work-  
22 ers who are partially unemployed, as proposed in legislative bills  
23 numbers S. 1042-A and A. 2355-A, is amended to read as follows:

24 (a) Compensation paid to a claimant for any day during a paid vacation  
25 period, or for a paid holiday, shall be considered compensation from  
26 employment and shall be included in the calculation of a claimant's  
27 benefit for partial unemployment as set forth in subdivision five of  
28 section five hundred ninety of this article.

29 § 7. Paragraph (a) of subdivision 6 of section 591 of the labor law,  
30 as added by section 13 of part 0 of chapter 57 of laws of 2013, is  
31 amended to read as follows:

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

38 § 8. Subparagraph (i) of paragraph (b) of subdivision 2 of section  
39 591-a of the labor law, as amended by a chapter of the laws of 2021  
40 amending the labor law relating to the calculation of weekly employment  
41 insurance benefits for workers who are partially unemployed, as  
42 proposed in legislative bills numbers S. 1042-A and A. 2355-A, is  
43 amended to read as follows:

44 (i) requirements relating to total unemployment [~~and partial unemploy-~~  
45 ~~ment~~], as defined in section five hundred twenty-two of this article,  
46 availability for work and search for work, as set forth in subdivision  
47 two of section five hundred ninety-one of this title and refusal to  
48 accept work, as set forth in subdivision two of section five hundred  
49 ninety-three of this title, are not applicable to such individuals;

50 § 9. Subparagraph (ii) of paragraph (b) of subdivision 2 of section  
51 591-a of the labor law, as added by chapter 413 of the laws of 2003, is  
52 amended to read as follows:

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

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

3 § 10. Subdivision 1 of section 596 of the labor law, as amended by a  
4 chapter of the laws of 2021 amending the labor law relating to the  
5 calculation of weekly employment insurance benefits for workers who  
6 are partially unemployed, as proposed in legislative bills numbers S.  
7 1042-A and A. 2355-A, is amended to read as follows:

8 1. Claim filing and certification to unemployment. A claimant shall  
9 file a claim for benefits [~~at the local state employment office serving~~  
10 ~~the area in which he was last employed or in which he resides within~~  
11 ~~such time and~~] in such manner as the commissioner shall prescribe. [~~He~~]  
12 The claimant shall disclose whether he or she owes child support obli-  
13 gations, as hereafter defined. If a claimant making such disclosure is  
14 eligible for benefits, the commissioner shall notify the state or local  
15 child support enforcement agency, as hereafter defined, that the claim-  
16 ant is eligible.

17 A claimant shall correctly report any weeks of employment and any  
18 compensation [~~he~~] received for such employment, including [~~employments~~]  
19 employment not subject to this article, and the weeks during which he or  
20 she was totally unemployed or partially unemployed and shall make such  
21 reports in accordance with such regulations as the commissioner shall  
22 prescribe.

23 § 11. Subdivision 4 of section 596 of the labor law, as amended by a  
24 chapter of the laws of 2021 amending the labor law relating to the  
25 calculation of weekly employment insurance benefits for workers who  
26 are partially unemployed, as proposed in legislative bills numbers S.  
27 1042-A and A. 2355-A, is amended to read as follows:

28 4. Registration and reporting for work. A claimant shall register as  
29 totally unemployed or partially unemployed [~~at a local state employment~~  
30 ~~office serving the area in which he was last employed or in which he~~  
31 ~~resides~~] with the department in accordance with such regulations as the  
32 commissioner shall prescribe. After so registering, such claimant shall  
33 report for work at the same local state employment office or otherwise  
34 give notice of [~~the continuance of his~~] continued total or partial unem-  
35 ployment as often and in such manner as the commissioner shall  
36 prescribe.

37 § 12. Paragraph (a) of subdivision 2 of section 599 of the labor law,  
38 as amended by a chapter of the laws of 2021 amending the labor law  
39 relating to the calculation of weekly employment insurance benefits for  
40 workers who are partially unemployed, as proposed in legislative  
41 bills numbers S. 1042-A and A. 2355-A, is amended to read as follows:

42 (a) Notwithstanding any other provision of this chapter, a claimant  
43 attending an approved training course or program under this section may  
44 receive additional benefits of up to twenty-six [~~effective weeks~~] times  
45 his or her weekly benefit amount following exhaustion of regular and, if  
46 in effect, any other extended benefits, provided that entitlement to a  
47 new benefit claim cannot be established. Certification of continued  
48 satisfactory participation and progress in such training course or  
49 program must be submitted to the commissioner prior to the payment of  
50 any such benefits. The [~~duration~~] amount of such additional benefits  
51 shall in no case exceed twice the [~~number of effective weeks~~] amount of  
52 regular benefits to which the claimant is entitled at the time the  
53 claimant is accepted in, or demonstrates application for appropriate  
54 training.

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



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

5 (b) for not more than [~~thirteen effective weeks with respect to his or~~  
6 ~~her applicable benefit year, with a total maximum amount equal to~~] fifty  
7 percentum of the total maximum amount of regular benefits payable in  
8 such benefit year, and

9 (c) if a claimant's benefit year ends within an extended benefit peri-  
10 od, the remaining balance of extended benefits to which he or she would  
11 be entitled, if any, shall be reduced by the [~~number of effective weeks~~  
12 amount of benefits] for which he or she was entitled to receive trade  
13 readjustment allowances under the federal trade act of nineteen hundred  
14 seventy-four during such benefit year, and

15 § 14. A chapter of the laws of 2021 amending the labor law relating to  
16 the calculation of weekly employment insurance benefits for workers  
17 who are partially unemployed, as proposed in legislative bills numbers  
18 S. 1042-A and A. 2355-A, is amended by adding two new sections 31 and  
19 32 to read as follows:

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

23 1. Days of total unemployment.

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

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

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

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

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

5     § ~~[31.]~~ 33. This act shall take effect on the thirtieth day after it  
6 shall have become a law; provided, however, that sections one through  
7 thirty of this act shall take effect on April 1, 2022 or thirty days  
8 after the commissioner of labor certifies that the department of labor  
9 has an information technology system capable of accommodating the amend-  
10 ments in this act, whichever occurs earlier; provided that section thir-  
11 ty-one of this act shall take effect on the thirtieth day after it shall  
12 have become a law and shall be applicable to new claims on such date and  
13 thereafter and shall be deemed repealed on the same date as the remain-  
14 ing provisions of this act take effect. In a manner consistent with the  
15 provisions of this section, the commissioner of labor shall notify the  
16 legislative bill drafting commission upon issuing his or her certif-  
17 ication in order that the commission may maintain an accurate and timely  
18 effective data base of the official text of the laws of the state of New  
19 York in furtherance of effecting the provisions of section 44 of the  
20 legislative law and section 70-b of the public officers law, and  
21 provided further that the amendments to subdivision 1 of section 591 of  
22 the labor law made by section twelve of this act shall be subject to the  
23 expiration and reversion of such subdivision pursuant to section 10 of  
24 chapter 413 of the laws of 2003, as amended, when upon such date the  
25 provisions of section thirteen of this act shall take effect; provided  
26 further that the amendments to section 591-a of the labor law made by  
27 section fifteen of this act shall not affect the repeal of such section  
28 and shall be deemed repealed therewith.

29     § 16. This act shall take effect immediately; provided that sections  
30 one through fourteen of this act shall take effect on the same date and  
31 in the same manner as a chapter of the laws of 2021 amending the labor  
32 law relating to the calculation of weekly employment insurance benefits  
33 for workers who are partially unemployed, as proposed in legislative  
34 bills numbers S. 1042-A and A. 2355-A, takes effect; provided, however,  
35 that the amendments to subdivision 1 of section 591 of the labor law  
36 made by section four of this act shall be subject to the expiration and  
37 reversion of such subdivision pursuant to section 10 of chapter 413 of  
38 the laws of 2003, as amended, when upon such date the provisions of  
39 section five of this act shall take effect; and provided, further, that  
40 the amendments to section 591-a of the labor law made by sections eight  
41 and nine of this act shall not affect the expiration and repeal of such  
42 section and shall expire and be deemed repealed therewith.