STATE OF NEW YORK

6244--B

Cal. No. 395

2021-2022 Regular Sessions

IN SENATE

April 19, 2021

Introduced by Sens. KRUEGER, AKSHAR, BAILEY, BIAGGI, BRISPORT, BROOKS, COONEY, GAUGHRAN, GIANARIS, GOUNARDES, HOYLMAN, JACKSON, KAMINSKY, KENNEDY, MARTUCCI, MATTERA, MAYER, O'MARA, ORTT, PALUMBO, RATH, REICHLIN-MELNICK, SAVINO, SEPULVEDA, SERINO, THOMAS, WEIK -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in 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:

Section 1. The labor law is amended by adding a new section 597-a to read as follows:

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

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

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

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

(d) "Categorical waivers" means a waiver for which the department receives approval after requesting permission to implement from the

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

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Federal Department of Labor and/or appropriate federal agency in accordance with UIPL 20-21, Change 1, Attachment 2. Upon approval, a categorical waiver becomes a blanket waiver.

(e) "Individual waiver" means a waiver made available to every claimant who has not been approved for a blanket waiver.

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

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

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

(b) The department shall apply for approval of categorical waivers as listed in this subdivision within thirty days of the effective date of this section. Upon approval of a categorical waiver, such approved waiver shall be considered to be a blanket waiver and the requirements for blanket waivers as listed in paragraph (a) of this subdivision shall apply. The department shall request approval for the following categorical waivers:

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

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

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

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

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

(c) If an individual is not approved for a blanket waiver, the department must assess each claimant's eligibility for a waiver individually at the time the overpayment is established. The department shall waive

such overpayment repayment if it is determined that the payment of such UPB was without fault on the part of such claimant and such repayment would be contrary to equity and good conscience. There shall be a presumption that the claimant is without fault where the claimant provided incorrect information or failed to provide information and documentation in the following situations:

(i) the department provided conflicting, changing, or confusing information or instructions;

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

(iii) the claimant was unable to reach the department despite their best efforts to inquire or clarify information the individual needed to provide, due to language, education, literacy, disability or other similar barriers;

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

(v) the claimant chose a reason for separation which is legally incorrect; or

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

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

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

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

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

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

(iv) where the individual used the unemployment benefits to meet their ordinary living expenses including but not limited to food, rent, medical costs and/or insurance, dental bills and/or insurance, school loans, school fees, utilities, childcare, mortgage payments, transporta-

tion, purchase or maintenance of a car or equipment needed for employment or self-employment, or operating expenses for self-employment;

(v) where the department made programming, technological or automated system errors or where individuals relied upon the department's publicized information later determined to be erroneous;

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

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

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

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

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

(xi) where a decision on a hearing that resulted in an overpayment being assessed was issued more than thirty days after the first unemployment benefit payment;

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

(xiii) where there is any other reason for which recovery of the overpayment would be against equity and good conscience under the circumstances;

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) A claimant who is dissatisfied with a determination regarding a waiver may, within sixty days after receipt of notice of the determination, request a hearing. Overpayment claimants shall have all the appeals rights provided by title eight of this article except that referees may extend the time fixed for requesting a hearing upon good cause shown.

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

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

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

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

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

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

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

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

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

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