

STATE OF NEW YORK

542

2023-2024 Regular Sessions

IN ASSEMBLY

January 9, 2023

Introduced by M. of A. BURGOS, MITAYNES, SIMON, DARLING, COLTON, GONZALEZ-ROJAS -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to penalties for wilful false statements for unemployment purposes

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

1 Section 1. Section 594 of the labor law, as amended by section 16 of
2 part O of chapter 57 of the laws of 2013, subdivisions 1 and 2 as
3 amended by chapter 277 of the laws of 2021, is amended to read as
4 follows:

5 § 594. [~~Reduction and recovery~~] Recovery of benefits and penalties for
6 wilful false statement.

7 (1) A claimant or employer who has wilfully made a false statement or
8 representation to obtain or avoid any benefit under the provisions of
9 this article shall [~~forfeit benefits for at least the first one but not~~
10 ~~more than the first twenty effective weeks following discovery of such~~
11 ~~offense for which he or she otherwise would have been entitled to~~
12 ~~receive benefits. Such penalty shall apply only once with respect to~~
13 ~~each such offense.~~

14 (2) ~~For the purpose of subdivision four of section five hundred ninety~~
15 ~~of this article, the claimant shall be deemed to have received benefits~~
16 ~~for such forfeited effective weeks.~~

17 (3) ~~The penalty provided in this section shall not be confined to a~~
18 ~~single benefit year but shall no longer apply in whole or in part after~~
19 ~~the expiration of two years from the date of the final determination.~~
20 ~~Such two-year period shall be tolled during the time period a claimant~~
21 ~~has an appeal pending.~~

22 (4) be subject to the penalties set forth in this section.

23 (2) A claimant shall refund all moneys received because of such false
24 statement or representation and pay a civil penalty in an amount equal
25 to the greater of one hundred dollars or fifteen percent of the total

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

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overpaid benefits determined pursuant to this section. An employer who wilfully made a false statement or representation to avoid payment of any benefit under the provisions of this article shall pay a civil penalty in an amount equal to the greater of one hundred dollars or fifteen percent of the total benefit determined pursuant to this section. The penalties collected hereunder shall be deposited in the fund. The penalties assessed under this subdivision shall apply and be assessed for any benefits paid under federal unemployment and extended unemployment programs administered by the department in the same manner as provided in this article. The penalties in this section shall be in addition to any penalties imposed under this chapter or any state or federal criminal statute. No penalties or interest assessed pursuant to this section may be deducted or withheld from benefits.

~~[(5)]~~ (3) (a) Upon a determination based upon a willful false statement or representation becoming final through exhaustion of appeal rights or failure to exhaust hearing rights, the commissioner may recover the amount found to be due by commencing a civil action, or by filing with the county clerk of the county where the claimant resides the final determination of the commissioner or the final decision by an administrative law judge, the appeal board, or a court containing the amount found to be due including interest and civil penalty. The commissioner may only make such a filing with the county clerk when:

(i) The claimant has responded to requests for information prior to a determination and such requests for information notified the claimant of his or her rights to a fair hearing as well as the potential consequences of an investigation and final determination under this section including the notice required by subparagraph (iii) of paragraph (b) of this subdivision. Additionally if the claimant requested a fair hearing or appeal subsequent to a determination, that the claimant was present either in person or through electronic means at such hearing, or subsequent appeal from which a final determination was rendered;

(ii) The commissioner has made efforts to collect on such final determination; and

(iii) The commissioner has sent a notice, in accordance with paragraph (b) of this subdivision, of intent to docket such final determination by first class or certified mail, return receipt requested, ten days prior to the docketing of such determination.

(b) The notice required in subparagraph (iii) of paragraph (a) of this subdivision shall include the following:

(i) That the commissioner intends to docket a final determination against such claimant as a judgment;

(ii) The total amount to be docketed; and

(iii) Conspicuous language that reads as follows: "Once entered, a judgment is good and can be used against you for twenty years, and your money, including a portion of your paycheck and/or bank account, may be taken. Also, a judgment will hurt your credit score and can affect your ability to rent a home, find a job, or take out a loan."

§ 2. Section one of this act shall apply to all false statements and representations determined on or after the effective date of this act and all forfeited effective days determined prior to such effective date shall remain in full force and effect for two years from the expiration of the initial determination. For purposes of applying such forfeited benefits, each effective day shall be considered twenty-five percent of a claimant's weekly benefit rate.

§ 3. This act shall take effect on the sixtieth day after it shall have become a law; provided, however, that the amendments to subdivi-

1 sions 1 and 2 of section 594 of the labor law made by section one of
2 this act shall take effect on the same date and the same manner as chap-
3 ter 277 of the laws of 2021 takes effect or 30 days after the commis-
4 sioner of labor certifies that the department of labor has an informa-
5 tion technology system capable of accommodating the amendments in
6 chapter 277 of the laws of 2021, whichever occurs earlier.