

# STATE OF NEW YORK

8928--A

## IN ASSEMBLY

January 30, 2024

Introduced by M. of A. BRONSON -- read once and referred to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to the recovery of overpayments of unemployment benefits; to direct the department of labor to provide claimants who have previously been denied waivers with applications for individual waivers; and to repeal certain provisions of such law relating thereto

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 594-a to  
2 read as follows:

3 § 594-a. Recovery of overpayments. (1) Definitions. For the purposes  
4 of this section:

5 (a) "Without fault" means the claimant did not, with the intent to  
6 receive benefits, intentionally supply false information or knowingly  
7 omit information, which directly resulted in the department issuing  
8 benefits to which the claimant knew they were not entitled;

9 (b) "Final determination" means thirty days after appeal rights have  
10 been exhausted or abandoned.

11 (c) "Willful" means intentional and deliberate.

12 (2) Notwithstanding any provision of section five hundred ninety-four  
13 of this title to the contrary, any claimant who has received benefits  
14 under the provisions of this article on or after January twenty-seventh,  
15 two thousand twenty, to which they were not entitled shall not be held  
16 liable for the amounts overpaid provided that all of the following  
17 conditions exist:

18 (a) Such overpayment was not due to fraud or due to a willful false  
19 statement or misrepresentation;

20 (b) Such overpayment was received without fault on the part of the  
21 claimant; and

22 (c) The recovery of such overpayment would be against equity and good  
23 conscience.

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

LBD02352-05-4

1     (3) When determining whether an overpayment was received without fault  
2 on the part of the claimant, the commissioner shall consider the follow-  
3 ing factors:

4     (a) The nature and cause of such overpayment and the capacity of the  
5 claimant to recognize the error resulting in such overpayment;

6     (b) Whether the claimant knew or reasonably should have known that he  
7 or she was not lawfully entitled to receive such benefits;

8     (c) Whether the benefits were received or retained because of the  
9 claimant's good faith reliance on an administrative or departmental  
10 error; and

11     (d) Whether the claimant willfully reported or failed to report infor-  
12 mation which resulted in such overpayment.

13     (4) (a) There shall be a presumption that the claimant is without  
14 fault if:

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

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

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

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

26     (v) the claimant chose a reason for separation which is legally incor-  
27 rect, though reasonable for the claimant to have selected under the  
28 circumstances; or

29     (vi) the claimant had assistance in filing a claim, certifying, or  
30 otherwise responding to the department and the claimant's assistant did  
31 not confirm required information with the claimant or misunderstood such  
32 information provided by the claimant, resulting in inaccurate informa-  
33 tion being submitted without the claimant's knowledge.

34     (b) There shall be a presumption that the payment of benefits is with-  
35 out fault if the overpayment was due to agency error or mistake or the  
36 employer provided incorrect or untimely information. Receipt or  
37 possession of the claimants' unemployment insurance handbook shall not  
38 create a presumption that the claimant was on notice of the handbook's  
39 contents nor shall receipt or possession of the handbook be used against  
40 the claimant on points of fact or law.

41     (5) Recovery of any overpayment would be against equity and good  
42 conscience if:

43     (a) recovery would cause financial hardship to the person from whom  
44 recovery is sought;

45     (b) the recipient of the overpayment can show, regardless of their  
46 financial situation, that repayment would cause them to relinquish a  
47 valuable right or change their position for the worse, including, but  
48 not limited to, signing a lease, taking out a loan, or declining other  
49 state or federal assistance in reliance on receipt of unemployment  
50 insurance benefits;

51     (c) the individual or their household receives social security income,  
52 supplemental security income, social security disability, medicaid,  
53 medicare, free or reduced public school lunch, FIP, temporary assist-  
54 ance, supplemental nutrition assistance program benefits, nutrition  
55 benefits provided as part of the special supplemental nutrition program  
56 for women, infants and children (WIC), home energy assistance program

1 benefits, senior citizen rent increase exemption, disability rent  
2 increase exemption, rental subsidy pursuant to federal or state law, is  
3 at or below four hundred percent of the federal poverty guidelines or  
4 living in project-based subsidized housing or any substantially equiv-  
5 alent successor programs to the aforementioned benefits programs;

6 (d) the individual used the unemployment benefits to meet their ordi-  
7 nary living expenses, including, but not limited to, food, rent, medical  
8 costs or insurance, dental bills or insurance, school loans, school  
9 fees, utilities, child care, mortgage payments, transportation, purchase  
10 or maintenance of a car or equipment needed for employment or self-em-  
11 ployment, or operating expenses for self-employment; or

12 (e) there is any other reason for which recovery of the overpayment  
13 would be against equity and good conscience under the circumstances.

14 (6) (a) In the event that a new determination by the commissioner or a  
15 decision by a referee, the appeal board, or a court results in a  
16 decrease or denial of any benefits previously allowed, or at any other  
17 time it has been determined that an overpayment has occurred, the claim-  
18 ant shall be notified in writing, by mail or electronically, within  
19 fifteen days of such determination or decision of his or her right to  
20 appeal such determination or decision and to request a waiver of recov-  
21 ery of such overpayment. Such notice shall include, but shall not be  
22 limited to:

23 (i) The total amount of such overpayment and the cause of such over-  
24 payment;

25 (ii) The schedule of repayment for such amounts overpaid;

26 (iii) The means by which the commissioner is entitled to collect or  
27 recover such overpayment;

28 (iv) An explanation of the claimant's right to appeal such determi-  
29 nation or decision in accordance with the provisions of this article and  
30 any rules and regulations promulgated thereunder;

31 (v) An explanation of the standards by which a claimant shall not be  
32 found liable for the amounts overpaid, as set forth in this section;

33 (vi) The process by which the claimant may request and obtain a waiver  
34 of recovery of such overpayment, including a copy of the waiver applica-  
35 tion; and

36 (vii) the amount that is waived and the reason why any or all of the  
37 overpayment was not waived.

38 (b) The commissioner shall review each waiver request in a manner  
39 consistent with this section to determine whether the claimant shall be  
40 held liable for any amounts overpaid. Any claimant who is found not to  
41 be liable for any amounts overpaid shall be entitled to receive a full  
42 waiver of such overpayment and any previously imposed penalties on such  
43 overpayment must be rescinded accordingly.

44 (c) (i) Any claimant who disagrees with a determination regarding a  
45 waiver may request a hearing within sixty days of receipt of the deter-  
46 mination.

47 (ii) Claimants shall have all appeals rights as provided under title  
48 eight of this article, except that referees may extend the time fixed  
49 for requesting a hearing upon good cause shown.

50 (iii) When a determination is made that the claimant was at fault, the  
51 referee and unemployment insurance appeals board shall review the deter-  
52 mination of fault and any willful misrepresentations de novo.

53 (d) The department shall within thirty days of the effective date of  
54 this section develop and implement a process by which claimants may  
55 request and obtain an individual waiver application by phone, fax, mail,  
56 and through the department's two-way communication system. The applica-

tion shall be made available to all claimants without regard to a determination of fault or willfulness in the receipt of the claimant's overpayment.

(e) All notifications shall be translated into the ten most commonly spoken languages in the state.

(f) Any funds recouped or repaid prior to the granting of a waiver under this section shall be returned to the claimant as provided under subdivision five of this section.

(7) (a) Upon the denial of any waiver request, or upon any other determination by the commissioner or a decision by a referee, the appeal board, or a court that a claimant shall be held liable for any overpayment, the claimant shall be notified in writing, by mail or electronically, within fifteen days of such determination or decision. Such notice shall set forth the reason for such denial, if applicable, and his or her right to request an adjustment to his or her repayment schedule.

(b) Where a waiver request is denied, a claimant shall be offered a repayment plan to pay down the amount owed over a period of time no less than three years. The duration of a repayment plan shall be based on the claimant's ability to pay. Upon a showing of financial hardship, repayment plans shall be set for an indefinite period with minimum payments of no less than five dollars per month. Nothing in this section shall impede the ability of the department to discharge, write off, or waive any overpayment.

(c) The commissioner shall grant an adjustment to the claimant's repayment schedule if at any time the claimant is able to demonstrate that there has been a change in his or her financial condition which warrants such adjustment. The department shall notify claimants of the ability to seek a modified repayment plan in writing upon the claimant's entry into a repayment plan.

§ 2. Subdivision 4 of section 597 of the labor law is REPEALED.

§ 3. Within sixty days of the effective date of this act, the department of labor shall provide claimants who have previously been denied waivers between March 9, 2020, and the effective date of this act with applications for individual waivers. If it is found that the department has collected benefits from a claimant as a result of the recovery of an overpayment which would be barred under the provisions of this act, the department shall refund such benefits to the claimant within thirty days of the approval of the waiver.

§ 4. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after March 9, 2020.