

# STATE OF NEW YORK

1245

2023-2024 Regular Sessions

## IN SENATE

January 11, 2023

Introduced by Sens. KRUEGER, BAILEY, BRISPORT, COONEY, GIANARIS, GOUNARDES, HOYLMAN-SIGAL, JACKSON, KENNEDY, MATTERA, MAYER, PALUMBO, SEPULVEDA, THOMAS, WEIK -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

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:

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

3 § 597-a. Waiver authority for certain overpayments of pandemic unem-  
4 ployment assistance. 1. Definitions. As used in this section:

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

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

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

18 (d) "Categorical waivers" means a waiver for which the department  
19 receives approval after requesting permission to implement from the  
20 Federal Department of Labor and/or appropriate federal agency in accord-  
21 ance with UIPL 20-21, Change 1, Attachment 2. Upon approval, a categori-  
22 cal waiver becomes a blanket waiver.

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

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1 (e) "Individual waiver" means a waiver made available to every claim-  
2 ant who has not been approved for a blanket waiver.

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

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

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

29 (b) The department shall apply for approval of categorical waivers as  
30 listed in this subdivision within thirty days of the effective date of  
31 this section. Upon approval of a categorical waiver, such approved waiv-  
32 er shall be considered to be a blanket waiver and the requirements for  
33 blanket waivers as listed in paragraph (a) of this subdivision shall  
34 apply. The department shall request approval for the following categor-  
35 ical waivers:

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

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

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

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

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

51 (c) If an individual is not approved for a blanket waiver, the depart-  
52 ment must assess each claimant's eligibility for a waiver individually  
53 at the time the overpayment is established. The department shall waive  
54 such overpayment repayment if it is determined that the payment of such  
55 UPB was without fault on the part of such claimant and such repayment  
56 would be contrary to equity and good conscience. There shall be a

1 presumption that the claimant is without fault where the claimant  
2 provided incorrect information or failed to provide information and  
3 documentation in the following situations:

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

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

8 (iii) the claimant was unable to reach the department despite their  
9 best efforts to inquire or clarify information the individual needed to  
10 provide, due to language, education, literacy, disability or other simi-  
11 lar barriers;

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

15 (v) the claimant chose a reason for separation which is legally incor-  
16 rect; or

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

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

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

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

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

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

49 (iv) where the individual used the unemployment benefits to meet their  
50 ordinary living expenses including but not limited to food, rent,  
51 medical costs and/or insurance, dental bills and/or insurance, school  
52 loans, school fees, utilities, childcare, mortgage payments, transporta-  
53 tion, purchase or maintenance of a car or equipment needed for employ-  
54 ment or self-employment, or operating expenses for self-employment;

1 (v) where the department made programming, technological or automated  
2 system errors or where individuals relied upon the department's publi-  
3 cized information later determined to be erroneous;

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

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

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

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

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

17 (xi) where a decision on a hearing that resulted in an overpayment  
18 being assessed was issued more than thirty days after the first unem-  
19 ployment benefit payment;

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

23 (xiii) where there is any other reason for which recovery of the over-  
24 payment would be against equity and good conscience under the circum-  
25 stances;

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

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

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

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

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

39 (i) the total amount of such overpayment and the cause of such over-  
40 payment;

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

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

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

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

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

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

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

55 (c) A claimant who is dissatisfied with a determination regarding a  
56 waiver may, within sixty days after receipt of notice of the determi-

1 nation, request a hearing. Overpayment claimants shall have all the  
2 appeals rights provided by title eight of this article except that  
3 referees may extend the time fixed for requesting a hearing upon good  
4 cause shown.

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

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

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

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

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

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

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

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

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

51 § 3. This act shall take effect immediately and shall apply to all  
52 pandemic unemployment assistance repayments assessed on or after March  
53 27, 2020.