

STATE OF NEW YORK

549--B

2023-2024 Regular Sessions

IN SENATE

January 5, 2023

Introduced by Sens. HOYLMAN-SIGAL, KRUEGER, RAMOS -- 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 -- 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 misrepresentation" or "willful false statement" means an
12 intentional, knowing, or deliberately false representation from the
13 claimant to the department, made in order to obtain unemployment insur-
14 ance benefits. "Knowing" for the purposes of this paragraph means having
15 actual knowledge.

16 (2) Notwithstanding any provision of section five hundred ninety-four
17 of this title to the contrary, any claimant who has received benefits

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

LBD02352-08-4

1 under the provisions of this article on or after January twenty-seventh,
2 two thousand twenty, to which they were not entitled shall not be held
3 liable for the amounts overpaid provided that all of the following
4 conditions exist:

5 (a) Such overpayment was not due to a willful false statement or
6 misrepresentation;

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

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

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

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

16 (b) Whether the claimant knew or reasonably should have known that
17 such claimant was not lawfully entitled to receive such benefits;

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

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

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

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

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

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

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

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

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

44 (b) There shall be a presumption that the payment of benefits is with-
45 out fault if the overpayment was due to agency error or mistake or the
46 employer provided incorrect or untimely information. Receipt or
47 possession of the claimants' unemployment insurance handbook shall not
48 create a presumption that the claimant was on notice of the handbook's
49 contents nor shall receipt or possession of the handbook be used against
50 the claimant on points of fact or law.

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

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

55 (b) the recipient of the overpayment can show, regardless of their
56 financial situation, that repayment would cause them to relinquish a

1 valuable right or change their position for the worse, including, but
2 not limited to, signing a lease, taking out a loan, or declining other
3 state or federal assistance in reliance on receipt of unemployment
4 insurance benefits;

5 (c) the individual or their household receives social security income,
6 supplemental security income, social security disability, medicaid,
7 medicare, free or reduced public school lunch, FIP, temporary assist-
8 ance, supplemental nutrition assistance program benefits, nutrition
9 benefits provided as part of the special supplemental nutrition program
10 for women, infants and children (WIC), home energy assistance program
11 benefits, senior citizen rent increase exemption, disability rent
12 increase exemption, rental subsidy pursuant to federal or state law, is
13 at or below four hundred percent of the federal poverty guidelines or
14 living in project-based subsidized housing or any substantially equiv-
15 alent successor programs to the aforementioned benefits programs;

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

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

24 (6) (a) In the event that a new determination by the commissioner or a
25 decision by a referee, the appeal board, or a court results in a
26 decrease or denial of any benefits previously allowed, or at any other
27 time it has been determined that an overpayment has occurred, the claim-
28 ant shall be notified in writing, by mail or electronically, within
29 fifteen days of such determination or decision of such claimant's right
30 to appeal such determination or decision and to request a waiver of
31 recovery of such overpayment. Such notice shall include, but shall not
32 be limited to:

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

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

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

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

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

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

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

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

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

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

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

7 (d) The department shall within thirty days of the effective date of
8 this section develop and implement a process by which claimants may
9 request and obtain an individual waiver application by phone, fax, mail,
10 and through the department's two-way communication system. The applica-
11 tion shall be made available to all claimants without regard to a deter-
12 mination of fault or willfulness in the receipt of the claimant's over-
13 payment.

14 (e) All notifications shall be translated into the twelve most common-
15 ly spoken languages in the state.

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

19 (7) (a) Upon the denial of any waiver request, or upon any other
20 determination by the commissioner or a decision by a referee, the appeal
21 board, or a court that a claimant shall be held liable for any overpay-
22 ment, the claimant shall be notified in writing, by mail or electron-
23 ically, within fifteen days of such determination or decision. Such
24 notice shall set forth the reason for such denial, if applicable, and
25 such claimant's right to request an adjustment to such claimant's repay-
26 ment schedule.

27 (b) Where a waiver is denied, the claimant shall be offered a repay-
28 ment plan to pay down the amount owed over a period of time no less than
29 three years. The repayment plan shall be based on the claimant's ability
30 to repay. After such three year repayment period, the department shall
31 write off any further overpayment debt remaining on the claim. Nothing
32 in this section shall impede the ability of the department to discharge
33 or waive any overpayment.

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

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

41 § 3. Paragraph (c) of subdivision 1 of section 600 of the labor law,
42 as amended by section 19 of part 0 of chapter 57 of the laws of 2013, is
43 amended to read as follows:

44 (c) If, at the time benefits are payable, it has not been established
45 that the claimant will be receiving such pension, retirement or retired
46 pay, annuity or other payment, benefits due shall be paid without a
47 reduction, subject to review within the period and under the conditions
48 as provided in [~~subdivisions~~ subdivision three [~~and—four~~] of section
49 five hundred ninety-seven with respect to retroactive payment of remun-
50 eration.

51 § 4. Within ninety days of the effective date of this act, the depart-
52 ment of labor shall provide claimants who have previously been denied
53 waivers between March 9, 2020, and the effective date of this act with
54 applications for individual waivers. If it is found that the department
55 has collected benefits from a claimant as a result of the recovery of an
56 overpayment which would be barred under the provisions of this act, the

1 department shall refund such benefits to the claimant within thirty days
2 of the approval of the waiver.
3 § 5. This act shall take effect immediately and shall be deemed to
4 have been in full force and effect on and after March 9, 2020.