

STATE OF NEW YORK

549--C

2023-2024 Regular Sessions

IN SENATE

January 5, 2023

Introduced by Sens. HOYLMAN-SIGAL, FERNANDEZ, JACKSON, 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 -- reported favorably from said committee and committed to the Committee on Finance -- 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-

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

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1 ance benefits. "Knowing" for the purposes of this paragraph means having
2 actual knowledge.

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

9 (a) Such overpayment was not due to a willful false statement or
10 misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (b) The commissioner shall review each waiver request in a manner
53 consistent with this section to determine whether the claimant shall be
54 held liable for any amounts overpaid. Any claimant who is found not to
55 be liable for any amounts overpaid shall be entitled to receive a full

1 waiver of such overpayment and any previously imposed penalties on such
2 overpayment must be rescinded accordingly.

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

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

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

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

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

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

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

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

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

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

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

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

1 § 4. Within 30 days of the effective date of this act, the Commis-
2 sioner of Labor shall seek a review of this act by the United States
3 Department of Labor to determine the effect of this act on the ability
4 of New York State to receive a cap and/or waiver on the reduction of tax
5 credits, otherwise known as the Benefit Cost Rate (BCR) penalty, pursu-
6 ant to section 3302 of the Federal Unemployment Tax Act and 20 CFR
7 606.20. As part of the request to review the act, the Commissioner shall
8 ask the USDOL how the provisions of this act that allow for the waiver
9 of the overpayments of Federal unemployment or assistance benefits,
10 alone, including Pandemic Unemployment Assistance, Pandemic Emergency
11 Unemployment Compensation and Federal Pandemic Unemployment Compensation
12 shall effect the ability of New York State to receive a cap and/or waiv-
13 er on the reduction of tax credits, otherwise known as the Benefit Cost
14 Rate (BCR) penalty, pursuant to section 3302 of the Federal Unemployment
15 Tax Act and 20 CFR 606.20. Within one week of the receipt of the USDOL's
16 review, the Commissioner shall certify that this act will or will not
17 prevent a cap and/or waiver of the BCR penalty and provide such certif-
18 ication along with a copy of the USDOL's response to a request for such
19 review to the Assembly and Senate Labor Committee chairs. As part of
20 this certification, the Commissioner shall state whether or not the
21 provisions of this act that allow for the waiver of the overpayments of
22 Federal unemployment or assistance benefits, alone, including Pandemic
23 Unemployment Assistance, Pandemic Emergency Unemployment Compensation
24 and Federal Pandemic Unemployment Compensation will or will not prevent
25 a cap and/or waiver of the BCR penalty. The Commissioner shall seek such
26 review as of January 15 of each successive year until the sooner of the
27 Commissioner certifying that this act will not prevent a cap and/or
28 waiver of the BCR penalty or the State unemployment insurance trust fund
29 becomes solvent.

30 § 5. This act shall take effect immediately provided, however that
31 sections one, two and three shall take effect upon the certification by
32 the Commissioner of Labor that this act will not prevent a cap and/or
33 waiver of the BCR penalty and shall be deemed to have been in full force
34 and effect on and after March 9, 2020. If the Commissioner certifies
35 that the provisions of this act that allow for the waiver of the over-
36 payments of Federal unemployment or assistance benefits including
37 Pandemic Unemployment Assistance, Pandemic Emergency Unemployment
38 Compensation and Federal Pandemic Unemployment Compensation will not
39 prevent a cap and/or waiver of the BCR penalty, those provisions shall
40 take effect immediately and shall be deemed to have been in full force
41 and effect on and after March 9, 2020. In the event that the Commis-
42 sioner certifies that all provisions of this act will prevent a cap and/or
43 waiver of the BCR penalty, the provisions of this act shall take effect
44 upon the solvency of the State unemployment compensation trust fund and
45 shall be deemed to have been in full force and effect on and after March
46 9, 2020. The Commissioner of Labor shall notify the legislative bill
47 drafting commission upon the Commissioner's certification as required by
48 this section in order that the commission may maintain an accurate and
49 timely effective data base of the official text of the laws of the state
50 of New York in furtherance of effectuating the provisions of section 44
51 of the legislative law and section 70-b of the public officers law.