STATE OF NEW YORK

8555

IN SENATE

February 13, 2024

Introduced by Sen. RAMOS -- 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 employers' obligations to report wages for the purposes of unemployment benefits, the payment of unemployment benefits, and employer penalties for non-compliance

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

Section 1. Subdivision 1 of section 570 of the labor law, as amended by chapter 7 of the laws of 1985, is amended to read as follows:

1. Rate. Each employer liable under this article**, including those employers liable pursuant to the presumption in subdivision one of section five hundred seventy-two of this title,** shall pay contributions on all wages paid by him at the rate of five and four-tenths per centum or, if applicable to the employer, at the rate provided by the provisions of sections five hundred seventy-seven and five hundred eighty-one **of this title**. However, if contributions so established exceed five and four-tenths per centum of wages paid by him which are subject to the federal unemployment tax act, they shall be reduced by that part of such excess, if any, which is caused by the provisions of paragraph (b) of subdivision one of section five hundred eighteen **of this article**.

§ 2. Section 572 of the labor law, as amended by chapter 726 of the laws of 1953, is amended to read as follows:

§ 572. [~~Notice~~] **Presumption** of liability. **1. Notwithstanding any other provision of law, upon the initial determination of a claim for benefits, if the department determines that any person is or was an employee within the meaning of this article, there shall be a presumption that such determination applies to all others performing similar services for the employer and such employer has become liable for contributions for all such employees under section five hundred seventy of this title and/or section six hundred seventy-four of the tax law. Upon final adjudication of any initial determination finding a claimant to be an employee, the reporting and contributions required under this title shall be made on all wages paid to such claimant and all others perform-**

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

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ing similar services for the employer. The employer's obligation to contribute for such employees shall continue until the employer successfully rebuts the presumption in a final adjudication of a future claim involving a claimant performing similar services for the employer. The presumption and obligations in this subdivision shall apply to all determinations already rendered and all future determinations.

2. Any employer who has become liable for contributions shall notify the commissioner of [~~such~~] the fact [~~immediately~~] and shall give information concerning [~~his~~] their operations and persons employed by [~~him~~] them to the commissioner no later then five business days after they become liable.

§ 3. Subdivision 4 of section 575 of the labor law, as renumbered by chapter 639 of the laws of 1954, is renumbered subdivision 3 and a new subdivision 2 is added to read as follows:

2. Upon any determination by the department, a referee of the unemployment insurance appeal board, or the board that a claimant is an employee under this article, the employer shall be considered an employer of such claimant and all those performing similar services for the employer. The employer's obligation to report earnings pursuant to this article and regulations of the commissioner shall continue unless and until reversed by administrative or judicial review and all further appeals have been exhausted.

§ 4. Section 575-a of the labor law, as added by chapter 5 of the laws of 2000, is amended to read as follows:

§ 575-a. Penalties relating to wage information. In the case of a failure by an employer to provide complete and correct wage reporting information on a quarterly combined withholding, wage reporting and unemployment insurance return required by paragraph four of subsection (a) of section six hundred seventy-four of the tax law, such employer shall, unless it is shown to the commissioner's satisfaction that there was good cause for such failure to comply, be liable as provided for in subdivisions one and two of this section. Lack of knowledge or a misunderstanding regarding the presumption established in subdivision one of section five hundred seventy-two of this title shall not constitute good cause for failure to comply with the provisions of this section.

1. [~~When the non-compliance is discovered through an examination of an employer's records, the~~] The employer shall be liable for a penalty in the following amount for each employee who is not included in the return or for whom the required information is not reported accurately:

(a) for the first failure for any calendar quarter in any eight consecutive calendar quarters[~~, one dollar for each employee, not to exceed one thousand dollars~~]:

(i) for employers with ten employees or less, twenty-five dollars for each employee;

(ii) for employers with more than ten but less than fifty employees, fifty dollars for each employee; and

(iii) for employers with fifty or more employees, one hundred dollars for each employee;

(b) for the second failure for any calendar quarter in any eight consecutive calendar quarters[~~, five dollars for each employee, not to exceed two thousand dollars~~]:

(i) for employers with ten employees or less, fifty dollars for each employee;

(ii) for employers with more than ten but less than fifty employees, one hundred dollars for each employee; and

(iii) for employers with fifty or more employees, two hundred dollars for each employee;

(c) for any subsequent failure in any calendar quarter in any eight consecutive calendar quarters[~~, twenty-five dollars for each employee, not to exceed five thousand dollars.~~

~~2. In those instances where a failure to comply is discovered in relation to a specific claimant's claim for benefits, the penalty shall be twenty-five dollars for each such occurrence.~~

~~3. If~~]:

(i) for employers with ten employees or less, one hundred dollars for each employee;

(ii) for employers with more than ten but less than fifty employees, two hundred dollars for each employee; and

(iii) for employers with fifty or more employees, four hundred dollars per employee.

2. Upon an employer's first violation of this section, if such employer provides complete and correct wage reporting information within thirty days after the department sends notice of such failure to the employer, then the penalty provided for by subdivision one of this section shall be abated.

[~~4.~~]3. The penalties imposed and collected pursuant to this section shall be credited to the special fund established pursuant to section five hundred fifty-two of this article.

4. Upon an employer's failure to report complete and correct wages of their employees, the commissioner shall provide written notice to the employer as provided in section five hundred seventy-one of this title. After providing such notice, if the employer does not file a correct and sufficient report within thirty days, the commissioner shall apply to the supreme court of the state of New York for an order requiring the employer to provide such wage reporting information.

5. Any of the following parties may seek an order in any court of competent jurisdiction requiring an employer to provide complete and correct wage reporting information to the commissioner for all of their employees:

(a) Any claimant, for whom the presumption established in subdivision one of section five hundred seventy-two of this title applies, who receives a monetary benefit determination which indicates that one or more of their employers has failed to report their wages; and

(b) Any employee who fails to receive a notice or wage statement pursuant to section one hundred ninety-five of this chapter, for whom the presumption established in subdivision one of section five hundred seventy-two of this title applies.

Any claimant or employee who prevails on such a claim shall be entitled to attorney's fees and costs, but no other damages.

§ 5. Subdivision 4 of section 570 of the labor law, as amended by chapter 726 of the laws of 1953, is amended to read as follows:

4. Fraud. If any part of any deficiency is due to fraud with intent to avoid payment of contributions to the fund, [~~fifty~~] one hundred per centum of the total amount of the deficiency, in addition to such deficiency, shall be assessed, collected, and paid in the same manner as if it were a deficiency. As used in this section, the term "fraud" shall include any instance where an employer failed to pay contributions and the employer knew or should have known that its employees were covered by the unemployment insurance law. Instances where an employer shall be deemed to have known its employees were covered by the unemployment insurance law shall include, but not be limited to, any situation where:

(a) an employer or any of its related entities have been found by the unemployment insurance appeal board to be the employer of employees providing similar services;

(b) an employer or any of its related entities have been found by the department to be the employer of employees providing any of the same services; and

(c) an employer has failed to cooperate with the department during an audit or investigation regarding its obligations under this article.

§ 6. Subdivision 2 of section 597 of the labor law, as amended by chapter 589 of the laws of 1998, paragraph (b) as amended by chapter 413 of the laws of 2003, and paragraph (d) as added by section 18 of part O of chapter 57 of the laws of 2013, is amended to read as follows:

2. Obtaining information necessary for determinations. (a) When filing an original claim, each claimant shall furnish to the commissioner all information which the commissioner shall require concerning his or her prior employment.

(b) Whenever a claimant's base period includes a completed calendar quarter for which a wage data report is not due or has not been received and the claimant provides information as required by the commissioner, the commissioner shall determine such claimant's entitlement and benefit rate using the information the claimant provided for such quarter. However, in those instances where the claimant is unable to provide such information to the commissioner's satisfaction, the commissioner may request the employer to provide the amount of remuneration paid to such individual. The commissioner shall notify each base period employer upon the establishment of a valid original claim, of such claim. If an employer provides new or corrected information in response to the initial notice of monetary entitlement, adjustments to the claimant's benefit rate and adjustments to the employer's experience rating account shall be prospective as of the date such information was received by the department.

(c) The commissioner shall issue a monetary benefit determination to the claimant within one week of an application for benefits. The monetary benefit determination shall include notice to the claimant that, if the determined amount of benefits payable to the claimant does not reflect the claimant's full earnings, such different amount may have occurred because the employer did not report or did not fully report their wages. The monetary benefit determination shall also notify the claimant that they should provide proof of earnings for the relevant period in order to properly determine the claimant's monetary eligibility. Anytime a claimant provides proof of earnings from a party previously determined to be an employer under this article, the commissioner shall issue a revised determination within three business days of receipt of the claimant's proof of earnings. In all other cases, the commissioner shall complete an investigation regarding whether the claimant's earnings are wages earned in covered employment and issue a determination regarding the additional earnings within forty-five days. In the event of an investigation, the commissioner shall provide the claimant with no less than fourteen days' notice of any deadlines to respond pursuant to such investigation.

(d) Notwithstanding paragraph (b) of this subdivision, adjustments to the claimant's benefit rate and adjustment to the experience rating charges to the employers' accounts will be retroactive to the beginning of the benefit claim in the following circumstances:

(i) the new or corrected information results in a higher benefit rate, or

(ii) the new or corrected information results in the claimant's failure to establish a valid original claim, or

(iii) the amount of the previously established benefit rate was based upon the claimant's willful false statement or representation.

[~~(d)~~] **(e)** Notwithstanding any provisions of this article, unless a commissioner's error is shown or the failure is the direct result of a disaster emergency declared by the governor or president, an employer's account shall not be relieved of charges resulting in an overpayment of benefits when the commissioner determines that the overpayment was made because the employer or the agent of the employer failed to timely or adequately respond to a request for information in the notice of potential charges or other such notice requesting information in relation to a claim under this article, provided, however, that the commissioner shall relieve the employer of charges the first time that the employer fails to provide timely or adequate information, if the employer provides good cause for such failure as determined by the commissioner.

"Timely" shall mean a response is provided in the time period specified in the notice as prescribed by the commissioner.

The term "adequately" shall mean that the employer or its agent submitted information sufficient to render a correct determination.

This prohibition for relief of charges shall apply to all employers under this article including employers electing payment in lieu of contributions.

§ 7. Paragraph (b) of subdivision 1 of section 620 of the labor law, as amended by chapter 554 of the laws of 2010, is amended to read as follows:

(b) When the initial determination of a claim for benefits, upon which a hearing has been requested, involves the question whether any person is or was an employer within the meaning of this article and is or was liable for the payment of contributions under this article, or the question whether an employer has fully complied with the obligations imposed by this article, written notice of the hearing shall be given to such persons or employer, either personally or by mail, and thereupon he, she or such employer shall be deemed a party to the proceeding, entitled to be heard. Upon such notice having been given, the referee may then decide such question or questions and any other issue related thereto, and his or her decision shall not be deemed limited in its effect to the immediate claimant making the claim for benefits but shall be deemed a general determination of such questions with respect to all [~~those employed by~~] **others performing similar services for** such person or employer for all the purposes of this article, and such decision shall be conclusive and binding upon the claimant and such person or employer, subject, however, to the right to appeal hereinafter provided.

§ 8. This act shall take effect immediately.