

# STATE OF NEW YORK

8928--B

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

22 (a) Such overpayment was not due to a willful false statement or  
23 misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

23 (iii) the claimant was unable to reach the department despite their  
24 best efforts to inquire or clarify information the individual needed to  
25 provide due to language, education, literacy, disability or similar  
26 barriers;

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

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

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

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

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

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

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

55 (c) the individual or their household receives social security income,  
56 supplemental security income, social security disability, medicaid,

1 medicare, free or reduced public school lunch, FIP, temporary assist-  
2 ance, supplemental nutrition assistance program benefits, nutrition  
3 benefits provided as part of the special supplemental nutrition program  
4 for women, infants and children (WIC), home energy assistance program  
5 benefits, senior citizen rent increase exemption, disability rent  
6 increase exemption, rental subsidy pursuant to federal or state law, is  
7 at or below four hundred percent of the federal poverty guidelines or  
8 living in project-based subsidized housing or any substantially equiv-  
9 alent successor programs to the aforementioned benefits programs;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 § 3. Paragraph (c) of subdivision 1 of section 600 of the labor law,  
36 as amended by section 19 of part 0 of chapter 57 of the laws of 2023, is  
37 amended to read as follows:

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

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

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