

STATE OF NEW YORK

549--A

2023-2024 Regular Sessions

IN SENATE

January 5, 2023

Introduced by Sen. HOYLMAN-SIGAL -- 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

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" means intentional and deliberate.

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

18 (a) Such overpayment was not due to fraud or due to a willful false
19 statement or misrepresentation;

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

LBD02352-02-3

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 he
11 or she 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,

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

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

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

(6) (a) In the event that a new determination by the commissioner or a decision by a referee, the appeal board, or a court results in a decrease or denial of any benefits previously allowed, or at any other time it has been determined that an overpayment has occurred, the claimant shall be notified in writing, by mail or electronically, within fifteen days of such determination or decision of his or her right to appeal such determination or decision and to request a waiver of recovery of such overpayment. Such notice shall include, but shall not be limited to:

(i) The total amount of such overpayment and the cause of such overpayment;

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

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

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

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

(vi) The process by which the claimant may request and obtain a waiver of recovery of such overpayment, including a copy of the waiver application; and

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

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

(c) (i) Any claimant who disagrees with a determination regarding a waiver may request a hearing within sixty days of receipt of the determination.

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

(iii) When a determination is made that the claimant was at fault, the referee and unemployment insurance appeals board shall review the determination 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 ten most commonly
9 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 his or her right to request an adjustment to his or her repayment sched-
20 ule.

21 (b) Where a waiver request is denied, a claimant shall be offered a
22 repayment plan to pay down the amount owed over a period of time no less
23 than three years. The duration of a repayment plan shall be based on the
24 claimant's ability to pay. Upon a showing of financial hardship, repay-
25 ment plans shall be set for an indefinite period with minimum payments
26 of no less than five dollars per month. Nothing in this section shall
27 impede the ability of the department to discharge, write off, or waive
28 any overpayment.

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

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

36 § 3. Within sixty days of the effective date of this act, the depart-
37 ment of labor shall provide claimants who have previously been denied
38 waivers between March 9, 2020, and the effective date of this act with
39 applications for individual waivers. If it is found that the department
40 has collected benefits from a claimant as a result of the recovery of an
41 overpayment which would be barred under the provisions of this act, the
42 department shall refund such benefits to the claimant within thirty days
43 of the approval of the waiver.

44 § 4. This act shall take effect immediately and shall be deemed to
45 have been in full force and effect on and after March 9, 2020.