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:

Section 1. The labor law is amended by adding a new section 594-a to read as follows:

§ 594-a. Recovery of overpayments. (1) Definitions. For the purposes of this section:

(a) "Without fault" means the claimant did not, with the intent to receive benefits, intentionally supply false information or knowingly omit information, which directly resulted in the department issuing benefits to which the claimant knew they were not entitled;

(b) "Final determination" means thirty days after appeal rights have been exhausted or abandoned.

(c) "Willful misrepresentation" or "willful false statement" means an intentional, knowing, or deliberately false representation from the 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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ance benefits. "Knowing" for the purposes of this paragraph means having actual knowledge.

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

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

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

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

(3) When determining whether an overpayment was received without fault on the part of the claimant, the commissioner shall consider the following factors:

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

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

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

(d) Whether the claimant willfully reported or failed to report information which resulted in such overpayment.

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

(i) the department provided conflicting, changing, or confusing information or instructions;

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

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

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

(v) the claimant chose a reason for separation which is legally incorrect, though reasonable for the claimant to have selected under the circumstances; or

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

(b) There shall be a presumption that the payment of benefits is without fault if the overpayment was due to agency error or mistake or the employer provided incorrect or untimely information. Receipt or possession of the claimants' unemployment insurance handbook shall not create a presumption that the claimant was on notice of the handbook's contents nor shall receipt or possession of the handbook be used against the claimant on points of fact or law.

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

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

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

(c) the individual or their household receives social security income, 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 such claimant's 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.

(d) The department shall within thirty days of the effective date of this section develop and implement a process by which claimants may request and obtain an individual waiver application by phone, fax, mail, and through the department's two-way communication system. The application shall be made available to all claimants without regard to a determination of fault or willfulness in the receipt of the claimant's overpayment.

(e) All notifications shall be translated into the twelve most commonly spoken languages in the state.

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

(7) (a) Upon the denial of any waiver request, or upon any other determination by the commissioner or a decision by a referee, the appeal board, or a court that a claimant shall be held liable for any overpayment, the claimant shall be notified in writing, by mail or electronically, within fifteen days of such determination or decision. Such notice shall set forth the reason for such denial, if applicable, and such claimant's right to request an adjustment to such claimant's repayment schedule.

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

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

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

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

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

§ 4. Within 30 days of the effective date of this act, the Commissioner of Labor shall seek a review of this act by the United States Department of Labor to determine the effect of this act on the ability of New York State to receive a cap and/or waiver on the reduction of tax credits, otherwise known as the Benefit Cost Rate (BCR) penalty, pursuant to section 3302 of the Federal Unemployment Tax Act and 20 CFR 606.20. As part of the request to review the act, the Commissioner shall ask the USDOL how the provisions of this act that allow for the waiver of the overpayments of Federal unemployment or assistance benefits, alone, including Pandemic Unemployment Assistance, Pandemic Emergency Unemployment Compensation and Federal Pandemic Unemployment Compensation shall effect the ability of New York State to receive a cap and/or waiver on the reduction of tax credits, otherwise known as the Benefit Cost Rate (BCR) penalty, pursuant to section 3302 of the Federal Unemployment Tax Act and 20 CFR 606.20. Within one week of the receipt of the USDOL's review, the Commissioner shall certify that this act will or will not prevent a cap and/or waiver of the BCR penalty and provide such certification along with a copy of the USDOL's response to a request for such review to the Assembly and Senate Labor Committee chairs. As part of this certification, the Commissioner shall state whether or not the provisions of this act that allow for the waiver of the overpayments of Federal unemployment or assistance benefits, alone, including Pandemic Unemployment Assistance, Pandemic Emergency Unemployment Compensation and Federal Pandemic Unemployment Compensation will or will not prevent a cap and/or waiver of the BCR penalty. The Commissioner shall seek such review as of January 15 of each successive year until the sooner of the Commissioner certifying that this act will not prevent a cap and/or waiver of the BCR penalty or the State unemployment insurance trust fund becomes solvent.

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