

STATE OF NEW YORK

5726

2025-2026 Regular Sessions

IN ASSEMBLY

February 20, 2025

Introduced by M. of A. BRONSON, HEVESI -- read once and referred 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:

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

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

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

17 § 572. [~~Notice~~] Presumption of liability. 1. Notwithstanding any other
18 provision of law, upon the initial determination of a claim for bene-
19 fits, if the department determines that any person is or was an employee
20 within the meaning of this article, there shall be a presumption that
21 such determination applies to all others performing similar services for
22 the employer and such employer has become liable for contributions for
23 all such employees under section five hundred seventy of this title
24 and/or section six hundred seventy-four of the tax law. Upon final adju-

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

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1 dication of any initial determination finding a claimant to be an
2 employee, the reporting and contributions required under this title
3 shall be made on all wages paid to such claimant and all others perform-
4 ing similar services for the employer. The employer's obligation to
5 contribute for such employees shall continue until the employer success-
6 fully rebuts the presumption in a final adjudication of a future claim
7 involving a claimant performing similar services for the employer. The
8 presumption and obligations in this subdivision shall apply to all
9 determinations already rendered and all future determinations.

10 2. Any employer who has become liable for contributions shall notify
11 the commissioner of [~~such~~] the fact [~~immediately~~] and shall give infor-
12 mation concerning [~~his~~] their operations and persons employed by [~~him~~]
13 them to the commissioner no later than five business days after they
14 become liable.

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

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

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

28 § 575-a. Penalties relating to wage information. In the case of a
29 failure by an employer to provide complete and correct wage reporting
30 information on a quarterly combined withholding, wage reporting and
31 unemployment insurance return required by paragraph four of subsection
32 (a) of section six hundred seventy-four of the tax law, such employer
33 shall, unless it is shown to the commissioner's satisfaction that there
34 was good cause for such failure to comply, be liable as provided for in
35 subdivisions one and two of this section. Lack of knowledge or a misun-
36 derstanding regarding the presumption established in subdivision one of
37 section five hundred seventy-two of this title shall not constitute good
38 cause for failure to comply with the provisions of this section.

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

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

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

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

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

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

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

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

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

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

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

11 ~~3. If]:~~

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

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

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

18 2. Upon an employer's first violation of this section, if such employ-
 19 er provides complete and correct wage reporting information within thir-
 20 ty days after the department sends notice of such failure to the employ-
 21 er, then the penalty provided for by subdivision one of this section
 22 shall be abated.

23 [~~4.~~] 3. The penalties imposed and collected pursuant to this section
 24 shall be credited to the special fund established pursuant to section
 25 five hundred fifty-two of this article.

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

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

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

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

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

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

49 4. Fraud. If any part of any deficiency is due to fraud with intent to
 50 avoid payment of contributions to the fund, [~~fifty~~] one hundred per
 51 centum of the total amount of the deficiency, in addition to such defi-
 52 ciency, shall be assessed, collected, and paid in the same manner as if
 53 it were a deficiency. As used in this section, the term "fraud" shall
 54 include any instance where an employer failed to pay contributions and
 55 the employer knew or should have known that its employees were covered
 56 by the unemployment insurance law. Instances where an employer shall be

1 deemed to have known its employees were covered by the unemployment
2 insurance law shall include, but not be limited to, any situation where:

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

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

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

11 § 6. Subdivision 2 of section 597 of the labor law, as amended by
12 chapter 589 of the laws of 1998, paragraph (b) as amended by chapter 413
13 of the laws of 2003, and paragraph (d) as added by section 18 of part 0
14 of chapter 57 of the laws of 2013, is amended to read as follows:

15 2. Obtaining information necessary for determinations. (a) When filing
16 an original claim, each claimant shall furnish to the commissioner all
17 information which the commissioner shall require concerning [~~his or her~~]
18 such claimant's prior employment.

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

34 (c) The commissioner shall issue a monetary benefit determination to
35 the claimant within one week of an application for benefits. The mone-
36 tary benefit determination shall include notice to the claimant that, if
37 the determined amount of benefits payable to the claimant does not
38 reflect the claimant's full earnings, such different amount may have
39 occurred because the employer did not report or did not fully report
40 their wages. The monetary benefit determination shall also notify the
41 claimant that they should provide proof of earnings for the relevant
42 period in order to properly determine the claimant's monetary eligibil-
43 ity. Anytime a claimant provides proof of earnings from a party previ-
44 ously determined to be an employer under this article, the commissioner
45 shall issue a revised determination within three business days of
46 receipt of the claimant's proof of earnings. In all other cases, the
47 commissioner shall complete an investigation regarding whether the
48 claimant's earnings are wages earned in covered employment and issue a
49 determination regarding the additional earnings within forty-five days.
50 In the event of an investigation, the commissioner shall provide the
51 claimant with no less than fourteen days' notice of any deadlines to
52 respond pursuant to such investigation. Where the employer has failed to
53 keep payroll records pursuant to subdivision four of section one hundred
54 ninety-five of this chapter, there shall be a presumption that the
55 claimant's good faith estimate of such claimant's earnings are correct.

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

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

7 (ii) the new or corrected information results in the claimant's fail-
8 ure to establish a valid original claim, or

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

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

23 "Timely" shall mean a response is provided in the time period speci-
24 fied in the notice as prescribed by the commissioner.

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

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

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

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

51 § 8. This act shall take effect immediately.