

STATE OF NEW YORK

444

2025-2026 Regular Sessions

IN SENATE

(Prefiled)

January 8, 2025

Introduced by Sen. HOYLMAN-SIGAL -- 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 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 § 3. Paragraph (c) of subdivision 1 of section 600 of the labor law,
39 as amended by section 19 of part 0 of chapter 57 of the laws of 2013, is
40 amended to read as follows:

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

48 § 4. Within 30 days of the effective date of this act, the Commis-
49 sioner of Labor shall seek a review of this act by the United States
50 Department of Labor to determine the effect of this act on the ability
51 of New York State to receive a cap and/or waiver on the reduction of tax
52 credits, otherwise known as the Benefit Cost Rate (BCR) penalty, pursu-
53 ant to section 3302 of the Federal Unemployment Tax Act and 20 CFR
54 606.20. As part of the request to review the act, the Commissioner shall
55 ask the USDOL how the provisions of this act that allow for the waiver
56 of the overpayments of Federal unemployment or assistance benefits,

1 alone, including Pandemic Unemployment Assistance, Pandemic Emergency
2 Unemployment Compensation and Federal Pandemic Unemployment Compensation
3 shall effect the ability of New York State to receive a cap and/or waiv-
4 er on the reduction of tax credits, otherwise known as the Benefit Cost
5 Rate (BCR) penalty, pursuant to section 3302 of the Federal Unemployment
6 Tax Act and 20 CFR 606.20. Within one week of the receipt of the USDOL's
7 review, the Commissioner shall certify that this act will or will not
8 prevent a cap and/or waiver of the BCR penalty and provide such certif-
9 ication along with a copy of the USDOL's response to a request for such
10 review to the Assembly and Senate Labor Committee chairs. As part of
11 this certification, the Commissioner shall state whether or not the
12 provisions of this act that allow for the waiver of the overpayments of
13 Federal unemployment or assistance benefits, alone, including Pandemic
14 Unemployment Assistance, Pandemic Emergency Unemployment Compensation
15 and Federal Pandemic Unemployment Compensation will or will not prevent
16 a cap and/or waiver of the BCR penalty. The Commissioner shall seek such
17 review as of January 15 of each successive year until the sooner of the
18 Commissioner certifying that this act will not prevent a cap and/or
19 waiver of the BCR penalty or the State unemployment insurance trust fund
20 becomes solvent.

21 § 5. This act shall take effect immediately provided, however that
22 sections one, two and three shall take effect upon the certification by
23 the Commissioner of Labor that this act will not prevent a cap and/or
24 waiver of the BCR penalty and shall be deemed to have been in full force
25 and effect on and after March 9, 2020. If the Commissioner certifies
26 that the provisions of this act that allow for the waiver of the over-
27 payments of Federal unemployment or assistance benefits including
28 Pandemic Unemployment Assistance, Pandemic Emergency Unemployment
29 Compensation and Federal Pandemic Unemployment Compensation will not
30 prevent a cap and/or waiver of the BCR penalty, those provisions shall
31 take effect immediately and shall be deemed to have been in full force
32 and effect on and after March 9, 2020. In the event that the Commission-
33 er certifies that all provisions of this act will prevent a cap and/or
34 waiver of the BCR penalty, the provisions of this act shall take effect
35 upon the solvency of the State unemployment compensation trust fund and
36 shall be deemed to have been in full force and effect on and after March
37 9, 2020. The Commissioner of Labor shall notify the legislative bill
38 drafting commission upon the Commissioner's certification as required by
39 this section in order that the commission may maintain an accurate and
40 timely effective data base of the official text of the laws of the state
41 of New York in furtherance of effectuating the provisions of section 44
42 of the legislative law and section 70-b of the public officers law.