WEST virginia legislature

2021 regular session

Introduced

House Bill 2873

By Delegates Young, Graves, Zukoff, Summers, Fleischauer, Walker and Brown

[Introduced March 03, 2021; Referred to the Committee on Workforce Development then Finance]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §21A-6-18, relating to allowing waiver of repayment of overpaid unemployment insurance; providing factors to consider by the Commissioner of Bureau of Employment Programs’ to waive repayments; prohibiting of a waiver if the insured commits fraud or is otherwise responsible for the over payment; providing criteria for eligibility for waiver; placing burden on insured to prove eligibility for waiver; providing procedures for review of claims; providing for discontinuance of further governmental payments until repayment is satisfied, and providing for a retroactivity clause.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-18. Waiver for repayment of benefits erroneously received.

(a) When an overpayment of unemployment benefits has occurred for which the claimant is not at fault, the commissioner shall waive repayment when repayment would be against equity and good conscience.

(b) Repayment would be against equity and good conscience when it would create financial hardship as defined in subsections (c) and (d) of this section.

(c) Unless there are unusual circumstances which would argue against waiver, the department will presume repayment would leave the claimant unable to provide basic necessities if the claimant’s current total household income in relation to household size does not exceed 100 percent of the federal OMB Poverty Guideline and circumstances are not reasonably likely to change within the next 90 days. If anyone in the claimant’s household receives Temporary Assistance to Needy Families (TANF) benefits, Supplemental Security Income (SSI) benefits, or Social Security then repayment of overpayment shall be deemed to be against equity and good conscience;

(d) In determining whether the repayment will be against equity and good conscience and cause financial hardship, the commissioner shall consider:

(1) Whether recovery of the overpayment would cause extraordinary and lasting financial hardship to the claimant resulting in the claimant’s loss of or inability to obtain minimal necessities of food, medicine, and shelter; and whether the financial hardship as described may be expected to last for the foreseeable future;

(2) All financial resources available to the claimant and members of the claimant’s household; and

(3) The claimant’s living expenses, including, but not by way of limitation, expenses for food, rent, clothing; debt payment obligations, accident and health insurance, medical care expenses, taxes owed, work related transportation; the support of others for whom the claimant is legally responsible; and whether the claimant detrimentally changed his or her financial position in reliance on the receipt of the overpaid benefits including, but not limited to, entering into a financial and/or contractual obligation that he or she would not have entered except for the receipt of the overpaid benefits.

(e) The overpaid claimant shall have the burden of proving entitlement to a waiver**,** and shall provide supporting documentation of financial hardship as required by the commissioner. The commissioner shall not consider any petition for waiver of overpayment while an appeal of the overpayment is pending. The commissioner may not waive repayment of any overpayment of any state or federal unemployment insurance benefits caused by fraud or otherwise the fault of the claimant.

(f) Unless repayment is waived in accordance with this section, whenever the commissioner finds, after notice and opportunity by the claimant to contest, that a claimant has received benefits erroneously and has been charged with an overpayment, recovery shall be carried out as set forth in §21A-10-8 or §21A-10-21 of the code, as applicable. No recovery may be attempted until the determination of an erroneous payment is final as to law and fact; and the individual has been notified of the opportunity to request a waiver under this section;and the individual has not requested a waiver within 21 days of being notified of the opportunity.

(g) The provisions of this section are retroactive and applicable to all benefits paid beginning on January 1st, 2020.

NOTE: The purpose of this bill is to allow the Commissioner of the Bureau of Employment Programs to waive repayment of overpaid benefits where the insured was not at fault in creating the overpayment, and the insured shows that repayment will create financial hardship as defined in the bill and would be against equity and good conscience.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.