

Regular Session, 2012

SENATE BILL NO. 437

BY SENATOR CROWE

UNEMPLOYMENT COMP. Provides for overpayment of benefits and the recovery thereof.
(CA-7s2.1(A)) (8/1/12)

1 AN ACT

2 To amend and reenact R.S. 23:1553(A), 1576, 1601(8), 1713, 1714, and 1726, relative to
3 unemployment compensation; to provide for separation notices; to provide for
4 method of calculation regarding the experience-rating account of an employer; to
5 provide for disqualification of employee benefits subsequent to commission of a
6 fraudulent act; to provide for the recovery of overpayment of benefits; to provide
7 relative to the overpayment of benefits; to provide for the payment of certain
8 benefits; to provide for penalties; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 23:1553(A), 1576, 1601(8), 1713, 1714, and 1726 are hereby
11 amended and reenacted to read as follows:

12 §1553. Noncharging of benefits; recoupment; social charge account; social charge
13 tax rate

14 A. Benefits charged after a requalification of a claimant pursuant to the
15 requirements of R.S. 23:1601(1), (2), (3), or (10) shall not be charged against the
16 experience-rating account of an employer ~~who timely filed forms LOES-77, LOES-~~
17 ~~110, LOES-106, or LOES-152 and the separation was determined to be under~~

1 disqualifying conditions when all of the following occurs:

2 (1) The employer timely filed a separation notice alleging
3 disqualification.

4 (2) Either a response to a notice of claim filed or a response to a notice
5 to base period employer has been filed.

6 (3) The separation of the employee from the employer was determined
7 to be under disqualifying conditions.

8 * * *

9 §1576. Notice of separation

10 Each ~~state board, commission, department, agency, or other employing~~
11 ~~authority of the state, including but not limited to school boards and police juries,~~
12 employer shall file with the administrator a notice of separation from service in a
13 form prescribed by the administrator with respect to each employee who leaves
14 its employ for any cause which may be potentially disqualifying and shall therein
15 state provide the date of separation, a full explanation of ~~and~~ the cause or causes
16 therefor, and all requested information about payments made to the separated
17 employee. The notice shall be mailed, delivered, or transmitted to the
18 administrator and to the separated employee within three days after the date on
19 which the separation from service occurred.

20 * * *

21 §1601. Disqualification for benefits

22 An individual shall be disqualified for benefits:

23 * * *

24 (8)(a) For the week, or fraction thereof, with respect to which he makes a
25 false statement or representation knowing it to be false, or knowingly fails to
26 disclose a material fact in obtaining or increasing benefits, whether or not he is
27 successful in obtaining or increasing benefits, or thereby receives any amount as
28 benefits under this Chapter to which he was not entitled, for the remainder of the
29 benefit year subsequent to the commission of the fraudulent act and continuing

1 for the fifty-two weeks which immediately follow the week in which such
2 determination was made. All benefits paid with respect to such weeks shall be
3 immediately due and on demand paid in accordance with department regulations to
4 the administrator for the fund and such individual shall not be entitled to further
5 benefits until repayment has been made or the claim for repayment has prescribed.

6 **If information indicating a claimant has earned any unreported wages for weeks**
7 **claimed is obtained by the administrator, prior to the administrator rendering**
8 **a determination on the issue, the claimant shall be notified by mail or other**
9 **delivery method. The claimant shall have seven days from the date of mailing**
10 **to respond, or if notice is not by mail, then the claimant shall have seven days**
11 **from the delivery date of such notice to respond.**

12 (b) A claim for repayment under this Section shall prescribe against the state
13 ~~five~~ **ten** years from the date the administrator determines that repayment is due. This
14 prescription shall be interrupted for the period of time during which an appeal is
15 pending, by the filing of suit for collection by the administrator or by an
16 acknowledgment or partial payment of the indebtedness. Any disqualification
17 decision or determination pursuant to this Paragraph may be appealed in the same
18 manner as from any other disqualification imposed under this Chapter.

19 * * *

20 §1713. Waiver of recovery and recovery of benefits improperly received by
21 beneficiary

22 A. If the administrator finds that an individual has received any payment
23 under this Chapter to which the individual was not entitled, such individual shall be
24 liable to repay such amount to the administrator for the unemployment compensation
25 fund, upon demand and in accordance with agency regulations, a sum equal to the
26 amount so received by the recipient, in addition to any penalties assessed, as
27 provided in R.S. 23:1714 and in accordance with R.S. 23:1740 through 1749. If the
28 claimant disagrees with such determination or assessment of overpayment, he shall
29 have the same right to file an appeal as on any other determination, as provided in

1 R.S. 23:1629 et seq., for administrative and judicial remedies.

2 B. ~~The issue of waiver of the right of recovery of any overpayment of~~
3 ~~benefits shall be heard upon any appeal of such determination or assessment of~~
4 ~~overpayment. The appeal referee, board of review, any court of jurisdiction, or the~~
5 ~~administrator pursuant to the conditions under Subsection C, may waive the right of~~
6 ~~recovery of any overpaid benefits received by any person who has received such~~
7 ~~benefits under this Chapter while any conditions for the receipt thereof were not~~
8 ~~fulfilled in his case, or while he was disqualified from receiving such benefits,~~
9 ~~provided that the receipt of said benefits did not come within the fraud provisions of~~
10 ~~R.S. 23:1601(8), the overpayment was without fault of the claimant, and the recovery~~
11 ~~thereof would defeat the purpose of benefits otherwise authorized or the recovery~~
12 ~~thereof would be against equity and good conscience.~~

13 C. If a claimant who is assessed an overpayment does not file an appeal of
14 such assessment, or if a claimant files an untimely appeal to the appeal referee, he
15 may then submit to the administrator a request for waiver of overpayment in
16 accordance with the regulations established by the administrator. The administrator
17 may waive the right of recovery of any such overpaid benefits received by the
18 claimant ~~under the same criteria as above stated in Subsection B.~~ The administrator
19 shall issue a notice of determination either granting or denying the request for waiver
20 of the overpayment. If the claimant disagrees with the determination, he may file an
21 appeal as provided for in R.S. 23:1629 et seq.

22 D(1) ~~If the receipt of benefits causing an overpayment is not waived,~~
23 ~~including fraud cases covered under R.S. 23:1601(8), the amount due~~ **Any amount**
24 **of benefits for which a person is determined to have been overpaid** shall, in the
25 discretion of the administrator, be either deducted from any benefits payable to the
26 claimant under this Chapter or he shall repay the administrator for the unemployment
27 compensation fund a sum equal to the amount so received by him, and such sum
28 shall be collectible in the manner provided for the collection of past due collections.

29 * * *

1 in R.S. 23:1725. Assessments are immediately collectible when made and any
2 employer may waive any delays and notices provided for in this ~~part~~ **Part**.

3 **B. No employer against whom an assessment under this Part is in effect**
4 **may submit a bid or proposal for or obtain any contract pursuant to Chapter**
5 **10 of Title 38 and Chapter 17 of Title 39. This provision shall cease upon**
6 **payment in full of the amount due under the assessment.**

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

Present law provides that an individual shall be disqualified for unemployment compensation benefits if the administrator of the Louisiana Workforce Commission finds that the employee has left employment from a base period or subsequent employer without good cause attributable to a substantial change made to the employment by the employer.

Present law provides that such disqualification shall continue until such time as the claimant can requalify by demonstrating that he has done the following:

1. Has been paid wages for work, subject to the unemployment insurance law, equivalent to at least 10 times his weekly benefit amount following the week in which the disqualifying separation occurred.
2. Has not left the last employer under disqualifying circumstances.

Proposed law retains present law but provides that benefits charged after a requalification of a claimant shall not be charged against the experience-rating account of an employer when all of the following occur:

1. The employer timely filed a separation notice alleging disqualification.
2. Either a response to a notice of claim filed or a response to a notice to base period employer has been filed.
3. The separation of the employee from the employer was determined to be under disqualifying conditions.

Present law requires each state board, commission, department, agency, or other employing authority of the state, including but not limited to, school boards and police juries, to file with the administrator a notice of separation from service for each employee who leaves its employ for any cause which may be potentially disqualifying and provide the date of separation and the cause therefor. Requires the notice to be mailed or transmitted within three days after the date the separation occurred.

Proposed law retains present law but changes state board, commission, department, agency, or other employing authority of the state to cover all employers and requires them to file with the administrator a notice of separation from service.

Present law provides that an individual shall be disqualified for benefits for the 52 weeks immediately following the week in which it was determined that he committed a fraudulent act relating to obtaining or increasing benefits.

Proposed law retains present law but makes the disqualification applicable to the remainder of the benefit year after the commission of the fraudulent act and then continuing for the 52 weeks following the determination of the fraudulent act.

Proposed law provides that if information indicating a claimant has earned any unreported wages for weeks claimed is obtained by the administrator prior to the administrator rendering a determination on the issue, the claimant shall be notified by mail or other delivery method. Proposed law provides that he shall have seven days from the date of mailing to respond, or if notice is not by mail, then he shall have seven days from the delivery date of such notice to respond.

Present law provides that a claim for repayment shall prescribe against the state five years from the date the determination is made that repayment is due. Proposed law increases the prescriptive period from five years to ten years.

Present law provides that an individual receiving benefit payments to which he was not entitled is liable to repay such benefits. Further provides that a waiver of the right of recovery of overpayment may be granted by an appeal referee, board of review, any court of jurisdiction, or the administrator. Proposed law limits the granting of a waiver to the administrator.

Proposed law provides that when an overpayment is \$100 or more, upon default, the administrator may recover the overpayment through a garnishment of the employee's wages.

Present law provides that a penalty shall be assessed if legal collection efforts are pursued, in the amount of \$20 or 25%, whichever is greater, of the total overpayment debt.

Proposed law retains present law but provides that the penalty shall be assessed if the claimant does not voluntarily repay overpaid benefits within 30 days of the date of mailing of notice of the overpayment.

Proposed law provides that the penalty to be assessed if overpayment of benefits was determined to be due to fraud committed by the employee shall be in the amount of \$20 or 100%, whichever is greater, of the total overpayment debt.

Proposed law requires 15% of any such amounts collected to be deposited with the U.S. Sec. of the Treasury to credit the account of the state in the Unemployment Trust Fund.

Present law provides that the collection of contributions, assessments or penalties which were owed by employers but not properly remitted to the department are tantamount and equivalent to judgment executed by a court.

Proposed law retains present law but prohibits any employer against whom an assessment has been levied from submitting a bid or proposal for any public contracts until full payment of the amount due under the assessment is made.

Effective August 1, 2012.

(Amends R.S. 23:1553(A), 1576, 1601(8), 1713, 1714, and 1726)