

# **New York State unemployment insurance benefits: A legal explanation of your weekly certification**

With unemployment (especially in the private sector) at high levels in New York State, certification for unemployment insurance is, for many, a weekly occurrence. Nonetheless, the New York State Department of Labor (“D.O.L”) requires answers to a series of questions before you complete your certification.

Specifically, the all too familiar automated voice cautions that in answering the D.O.L.’s questions you are certifying that your answers are correct. In addition, the D.O.L. asserts that you are aware that the law provides penalties false responses.

New York State Labor Law addresses false statements under the following laws:

## **Labor Law Section 597 (3) and (4)**

3.

Limitation on review of determinations. Any determination regarding a benefit claim may, in the absence of fraud or wilful misrepresentation, be reviewed only within one year from the date it is issued because of new or corrected information, or, if the review is based thereon, within six months from a retroactive payment of remuneration, provided that no decision on the merits of the case has been made upon hearing or appeal. Such review shall be conducted and a new determination issued in accordance with the provisions of this article and regulations and procedure prescribed thereunder with respect to the adjudication and payment of claims, including the right of appeal.

4.

Effect of review. Whenever a new determination in accordance with the preceding subdivision or a decision by a referee, the appeal board, or a court results in a decrease or denial of benefits previously allowed, such new determination or decision, unless it shall be based upon a retroactive payment of remuneration, shall not affect the rights to any benefits already paid under the authority of the prior determination or decision provided they were accepted by the claimant in good faith and the claimant did not make any false statement or representation and did not wilfully conceal any pertinent fact in connection with his or her claim for benefits.

A more dire situation involves cases alleging fraud or willful misrepresentation. And, to clarify, if you willfully defraud the Department of Labor through misrepresentation then you are subject to Section 594 of the Labor Law and open the possibility of charges stemming from a criminal intent to defraud.

## **Effect of review**

§ 594. Reduction of benefits for false statement. A claimant who has willfully made a false statement or representation to obtain any benefit under the provisions of this article shall forfeit benefits for at least the first four but not more than the first eighty effective days following discovery of such offense for which he otherwise would have been entitled to receive benefits. Such penalty shall apply only once with respect to each such offense. For the purpose of subdivision four of section five hundred ninety of this article, the claimant shall be deemed to have received benefits for such forfeited effective days. The penalty provided in this section shall not

be confined to a single benefit year but shall no longer apply in whole or in part after the expiration of two years from the date on which the offense was committed. A claimant shall refund all moneys received because of such false statement or representation made by him.

The section above (the Section 597) focuses on timing and not necessarily on misrepresentation. In short, it is a statute that safeguards the claimant (you) from the possibility that the D.O.L. decides to simply change its mind about initially awarding you unemployment insurance. The law sets time limits for the re-opening of a case based upon new evidence (facts) or if the original determination was incorrect as a matter of law. Essentially, that means the D.O.L. cannot turn around and decide that in retrospect it should have decided against you.

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However, legally, “willful misrepresentation” (or fraud) and “willful” are separate determinations. For clarification, let’s take an example often used in a LSAT preparation course:

→ If it is raining then it must be cloudy.

however,

→ If it is cloudy it does not necessarily mean it is raining.

Apply that same logic to Labor Law: If you make a willful misrepresentation to the D.O.L then you are subject to section 594. However, you are not necessarily subject to section 594 (i.e. fraud and misrepresentation) if you make a willful misrepresentation. For instance, as in *Valvo v. Ross*, 132 A.D.2d 344, 346 if reasonable minds might differ as to whether a claimants activities” constitute employment and where the

“Unemployment Insurance Appeal Board has found the claimant to be employed in the technical sense of the labor law.” Valvo, 132 A.D.2d at 346.

That means, if denied benefits under section 594 for willful misrepresentation by the Board, but when you certified reasonably believed that you were fully unemployed then it is likely you are not subject to fraud.