

May 16, 2023

## **Memo of Support**

### **Unemployment Insurance Overpayments (S. 549 / Hoylman-Sigal)**

The National Center for Law and Economic Justice advances racial and economic justice for low-income families, individuals, and communities across the country. We submit these comments to provide information about and urge you to support S549 (Hoylman), a bill in relation to the recovery of overpayments of unemployment benefits. S549 protects low-income benefits claimants who are overpaid benefits through no fault of their own from punitive benefits claw backs. The bill will particularly aid people of color, limited English proficiency claimants, and claimants with limited technological access who are disproportionately burdened with unfair overpayments.

S549 creates a waiver process for New York State Unemployment Insurance (UI) overpayments, which does not currently exist under New York law, and requires the New York State Department of Labor (NYSDOL) to utilize a broad standard, in line with federal law, when determining whether federal UI overpayments should be waived. Throughout the COVID-19 pandemic, expanded UI benefits provided a vital lifeline for workers and their families. As businesses closed, childcare options dwindled, and unemployment jumped to unprecedented rates. Unemployed workers turned to federally increased UI to make rent, buy food, and pay their bills, returning millions of dollars back into their communities and sustaining New York's economy.

The vast majority of UI overpayments during the pandemic resulted from errors of the NYSDOL rather than individual claimants. NYSDOL had to quickly ramp up new federal benefit programs and process an unprecedented influx of UI claims throughout the pandemic. As a result, claimants collected tens of thousands of dollars in benefits which were later deemed to be overpayments. Despite the United States Department of Labor (USDOL) allowing New York to waive repayment of many of these federal dollars since 2021, the NYSDOL has still failed to waive the majority of overpayments. In fact, it has only waived a small fraction of overpayments, in contrast to many states including Massachusetts, Michigan, Maryland, New Mexico, Rhode Island among others, that have followed federal guidelines to waive almost all overpayments to residents in their states. There are thousands of low-income New Yorkers struggling to support their families while facing repayment of a debt that they never anticipated. This bill will require the NYSDOL to waive repayment for those workers.

The bill requires waiver of unemployment benefits when such benefits were received without fault on the part of the claimant and where repayment would be contrary to equity and good conscience.

An individual is without fault if they did not intentionally supply false information or knowingly omit information which directly resulted in the NYSDOL issuing benefits to which the claimant knew they were not entitled. The bill creates presumptions that the claimant is without fault in several situations, including where the claimant was unable to reach NYSDOL despite their best efforts and where the claimant was unable to understand

the NYSDOL directives due to [language](#), education, literacy, disability or other similar barriers.

S549 broadly defines equity and good conscience to include: that the recovery would cause financial hardship; that the individual is receiving income-based benefits such as Social Security Insurance; where the individual can show that repayment would cause them to relinquish a valuable right; or where the individual used the unemployment benefits to meet their ordinary living expenses including food, rent, medical costs, school loans, utilities, child care, mortgage payments, and transportation.

S549 limits the definition of fault for the purpose of overpayments to focus recovery efforts on true cases of fraud. NYSDOL currently finds fault where a claimant makes virtually any false statement, even as the result of mistaken belief or confusion regarding the information sought. NYSDOL has determined that over 70% of overpayments of federal Pandemic Unemployment Assistance were paid due to the fault of claimants, whereas states such as Michigan and Massachusetts determined fault at the rate of .06% and 1.6% respectively. The only other state to have a higher “fault” percentage than NY is Georgia. New York’s exceptionally punitive practice of finding workers at “fault” causes considerable economic hardship for innocent New York residents, and is contrary to our state’s ideals of equity and fairness.

Waivers of federal UI benefits take \$0 dollars from the New York State treasury. In addition, waivers of federal benefits do not affect the New York State Unemployment Insurance Trust Fund. Waiver of overpaid New York State UI benefits will have a de minimus effect on the New York Unemployment Insurance Trust Fund. The New York State Unemployment Insurance Coalition supports ending the Trust Fund deficit through creation of a more equitable funding system, including raising taxes on high-wage earners.

For more information, please contact Anjana Malhotra, Senior Staff Attorney, National Center for Law and Economic Justice, at 917-583-5849, [malhotra@nclej.org](mailto:malhotra@nclej.org)

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### Multi-State Comparison: Waivers for Unemployment Insurance Overpayment Clawbacks

State	Number of waivers issued, sent, or paused
Michigan	<a href="#">407,300 overpayments</a> waived (\$4.35 billion in overpayment debt (7/21/22) <a href="#">More expected</a>
Massachusetts	<a href="#">287,656</a> overpayment waivers scheduled Waiver collection paused
New Jersey	<a href="#">250,000 overpayments on hold</a>
Guam	<a href="#">All non-fraudulent overpayments waived</a> , more than \$8 million
Maryland	<a href="#">85,000</a> waiver notices sent, totaling \$77 million
Indiana	<a href="#">31,464</a> overpayment waivers submitted <a href="#">\$7+ million</a> in overpayments waived
New Mexico	<b>24,872</b> claimants' overpayments <a href="#">paused</a> Sent out <a href="#">waiver letters</a>
Virginia	<a href="#">23,210 overpayment waivers issued</a> , worth \$80 million
Rhode Island	<b>No collection</b> on <a href="#">any non-fraudulent overpayments</a>
<b>*New York</b>	<b>18,604</b> waiver applications sent to claimants (8,981 approved from sent) <b>11,319</b> total overpayment waivers issued

\*Source: NYSDOL, 11/29/22