

September 22, 2022

**SENATE COMMITTEE SUBSITUTE FOR
SENATE BILL NO. 2357**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Committee Substitute of Senate Bill No. 2357 with my recommendations for reconsideration.

Senate Committee Substitute for Senate Bill No. 2357 makes certain changes to the administration of the State's unemployment insurance ("UI") system to increase the system's efficiency and expedite timely benefits payments. Among other things, the bill mandates enhanced information sharing among the Department of Labor and Workforce Development's Division of Unemployment and Temporary Disability Insurance ("the Division"), New Jersey employers, and claimants, requires that information be shared among the parties via electronic means, and imposes penalties on employers who fail to promptly provide the Division with the requisite information. The bill also modifies the process to appeal a benefit determination and specifies that a claimant whose benefit is reduced as a result of an appeal is not liable to repay the overpayment when the claimant is not at fault. Similarly, the bill requires a claimant to be paid any benefits withheld pending an appeal of a determination that a claimant is disqualified if the claimant is ultimately determined to be eligible to receive UI.

I commend the bill's sponsors for their dedication to improving our State's UI system. The revisions contained in the bill will promote a more expeditious review of unemployment claims and ensure a reliable and transparent process for all involved. In particular, the provisions protecting claimants from overpayment repayment will restore confidence that claimants

acting in good faith can rely on the Division's determinations and use their benefits without fear of a reversal.

However, I have been advised by the United States Department of Labor ("USDOL") that they have reviewed Senate Committee Substitute for Senate Bill No. 2357 for the purpose of determining conformity with federal unemployment compensation law and have identified multiple "conformity issues," where they believe the bill's provisions are inconsistent with federal law, including the Coronavirus Aid, Relief, and Economic Security ("CARES) Act. A State's unemployment compensation law must conform with the requirements of 20 C.F.R. § 604.6 for purposes of certification under (1) 26 U.S.C. § 3304(c) of the Federal Unemployment Tax Act with respect to whether employers are eligible to receive credit against the Federal unemployment tax established by 26 U.S.C. § 3301, and (2) 42 U.S.C. § 502 of the Social Security Act with respect to whether a State is eligible to receive Federal grants for the administration of its unemployment compensation program.

Specifically, as to Senate Committee Substitute for Senate Bill No. 2357, the USDOL has identified as a conformity issue that certain employers may be unable to comply with the bill's provisions requiring information sharing via electronic means. USDOL has also identified as a conformity issue the bill's language regarding the release of claimants from liability to repay "any portion" of certain overpayments. The USDOL has advised that this language in the bill is inconsistent with language in the CARES Act permitting waivers of overpayment only if a state determines both that the overpayment was not the fault of the claimant and that requiring the claimant to pay back the overpayment would be contrary to equity and good conscience. See §§ 2102(d)(4), 2104(f)(2) and 2107(e)(2) of the CARES Act. Finally, USDOL has

cautioned that, under federal law and regulations, benefits may not be paid for an overturned period of disqualification without weekly certifications from the claimant for the applicable period evidencing the claimant's eligibility. See 20 C.F.R. § 604.3(a) (A State may pay unemployment compensation only to an individual who is able to work and available for work for the week for which unemployment compensation is claimed).

Accordingly, I am recommending minor revisions to Senate Committee Substitute for Senate Bill No. 2357 to address the concerns raised by USDOL and ensure that benefits are paid in conformity with federal law. These revisions authorize the Division to permit an employer to communicate information with the Division by methods other than electronic communication in those limited circumstances where an employer has demonstrated an inability to communicate electronically. My recommended changes also clarify that overpayments paid under federal CARES Act programs may only be waived if the Division determines that both (1) the overpayment was not the fault of the claimant and (2) repayment would be contrary to equity and good conscience. Finally, my revisions specify that benefits may not be paid to a claimant for any week during which the claimant has failed to provide to the division a weekly certification evidencing the claimant's eligibility for benefits.

In addition to the changes I am recommending at the request of the USDOL, my revisions also give the Division additional time to implement the law in order to ensure a seamless transition to the enhanced system.

Therefore, I herewith return Senate Committee Substitute for Senate Bill No. 2357 and recommend that it be amended as follows:

Page 3, Section 1, Line 11: After "employer." insert
"Notwithstanding the
provisions of this section

which require employers to provide information to the division by electronic means, and the division to provide notifications to an employer by electronic means, the commissioner shall have the discretion to establish by rule an alternate method or methods for employers to provide the required information to the division and for the division to provide the required notifications to an employer in circumstances where it is established, to the satisfaction of the commissioner, that the employer is unable to provide the information to the division or is unable to receive notifications from the division by electronic means."

Page 6, Section 1, Line 38:

After "disqualification" insert ", except that no such benefits shall be paid to the claimant for any week during which the claimant has failed to provide to the division a weekly certification evidencing the claimant's eligibility for benefits"

Page 7, Section 1, Line 8:

After "overpayment" insert "where the overpayment is of regular Unemployment Compensation. In the case of the recovery of an overpayment of benefit under any of the following programs authorized by the federal "Coronavirus Aid, Relief, and Economic Security (CARES) Act," Pub.L.116-136: Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), Mixed Earners Unemployment Compensation (MEUC), Pandemic Unemployment Assistance (PUA), or the first week of regular Unemployment Compensation that is reimbursed in accordance with Section 2105 of the CARES Act, a recovery shall not be waived unless the division determines that the claimant is without fault and the repayment would be contrary to equity and good conscience"

Page 15, Section 2, Line 38:

Delete "(d)"

Page 15, Section 2, Line 39:

Delete "full"

Page 16, Section 2, Line 2:

Delete "or"

Page 16, Section 2, Line 3:

After "(PUA)" insert ", or the first week of regular Unemployment Compensation that is reimbursed in accordance with Section 2105 of the CARES Act"

Page 17, Section 3, Line 42:

Delete "120th" and insert "270th" in its place

Page 17, Section 3, Line 43:

Delete "120th" and insert "270th" in its place

Respectfully,

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Kate McDonnell

Senior Deputy Chief Counsel to the Governor