



## Office of Temporary and Disability Assistance

ANDREW M. CUOMO  
Governor

SAMUEL D. ROBERTS  
Commissioner

SHARON DEVINE  
Executive Deputy Commissioner

### MEMORANDUM

**TO:** All NYC Hearing Officers and Professional Staff

**FROM:** Jim Ryan

**SUBJECT:** Chapter 562 L. 2015 Conciliation Procedures in NYC for Employment Cases

**DATE:** December 30, 2015

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Attached are amendments to the Social Services Law signed by Governor Cuomo on December 18, 2015, as [Chapter](#) 562 L. 2015. The amendments add a new Section 341-a, which establishes a “re-engagement process” in **New York City** for a recipient of Public Assistance to avoid a pro-rata reduction in benefits for non-compliance with employment requirements. Additionally, amendments are made to Social Services Law Section 341 regarding the conciliation process; a new Section 342-a is added regarding sanctions for non-compliance with employment requirements in **New York City**; and amendments are made to Social Service Law Section 342 exempting **New York City** from the sanction provisions in this section. These amendments went into effect immediately upon the Governor signing the bill on December 18, 2015. [Emphasis added]

OTDA took action to temporarily suspend the issuance of applicable public assistance employment sanctions and associated notices for residents of New York City effective December 22, 2015. This temporary suspension is designed to ensure individuals are not sanctioned before implementation of the procedures necessary to appropriately implement the law.

The new law permits any individual who complies with public assistance work requirements or who becomes exempt from work requirements to end a sanction, HRA will notify individuals who are currently sanctioned and within the previously required minimum durational period. For individuals who subsequently contact HRA and comply with work requirements, HRA must immediately end the sanction and restore the individual to assistance or permit the person to reapply for assistance as appropriate. Prospectively, notices will inform individuals who are sanctioned for failure to comply with work requirements that he or she may end a sanction following program compliance. This can be done at a fair hearing.

As a result of these amendments, all employment sanction notices issued by **HRA on, or after, December 18, 2015**, are invalid and HRA’s determination must be reversed. Additionally, if an employment sanction notice issued **prior to December 18, 2015, has an effective date of December 18, 2015, or later**, HRA’s determination must be reversed but may be issued as Correct When Made.

The discussion section of the decision should have the following language:

With regard to the Agency's determination to discontinue/reduce the Appellant's Public Assistance benefits, Chapter 562 L. 2015 provides that, effective December 18, 2015, NYC Human Resources Administration must no longer impose durational sanctions

on individuals who willfully and without good cause fail, or refuse, to comply with Public Assistance work requirements. Therefore the Agency's determination to discontinue/reduce the Appellant's Public Assistance benefits for failure to comply with work requirements cannot be sustained.

The decision and order section should have the following language:

The Agency's determination to (discontinue/reduce) the Appellant's Public Assistance benefits on the grounds that Appellant willfully and without good cause failed, or refused, to comply with work requirements was not correct.

The Agency is directed to:

Withdraw its notice and restore the Appellant's Public Assistance benefits retroactive to the date of (discontinuance/reduction) and continue the Appellant's Public Assistance benefits.

For employment sanctions effective **prior to December 18, 2015**, HRA should be affirmed, if HRA meets the burden of proof and the Appellant did not establish good cause for the failure to comply with employment requirements. However, the Appellant should be advised in the discussion that he/she may now re-engage in the employment program by notifying HRA of his/her willingness to comply.

Social Services Law Section 341-a(2)(a) provides that if a participant has failed or refused to comply with employment requirements and the district (**HRA**) has determined that the participant is not "exempt from such requirements and has verified that appropriate child care, transportation, and accommodations for disability were in place at the time of such failure or refusal, the social services district shall issue a re-engagement notice in plain language indicating that such failure or refusal has taken place and of the right of such participant to avoid a pro-rata reduction in public assistance benefits through the re-engagement process."

The "re-engagement process" allows a participant to agree to "comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities, by notifying the district that he or she has become exempt from the requirements of this title, or by resolving the reasons for such failure or refusal at a conciliation conference."

The re-engagement notice must indicate "the specific instance or instances of willful refusal or failure to comply without good cause with the requirements of this title and the necessary actions that must be taken to avoid a pro-rata reduction in public assistance benefits and the district has verified that appropriate child care, transportation, and accommodations for disability were in place at the time of such failure or refusal." The re-engagement notice must also include an explanation in "plain language" of what would constitute good cause for non-compliance and "examples of acceptable forms of evidence that may warrant an exemption from work activities, including evidence of domestic violence, and physical or mental health limitations that may be provided at the conciliation conference to demonstrate such good cause for failure to comply with the requirements of this title."

Section 341-a(2)(a)(1) further provides that "unless as part of the re-engagement process the participant does not agree to comply, has not become exempt or the district determines as a result of the conciliation conference that such failure or refusal was willful and without good cause, no further action shall be taken."

Section 341-a(2)(a)(2) provides that if the participant does not contact the district within ten days of the re-engagement notice, the district shall make a finding of whether the failure or refusal to comply was “willful and without good cause and shall consider any evidence in the possession of the district indicating that the participant has good cause and if the participant is otherwise participating in work activities, **there shall be no finding of willfulness without good cause based on a single appointment or infraction.**” [Emphasis added]

Section 341-a(2)(b) provides that if the district (**HRA**) determines that the failure was willful and without good cause, and the individual is not exempt from employment requirements, then a ten-day notice of discontinuance or reduction of Public Assistance is sent. The notice “shall verify that appropriate child care, transportation, and accommodations for disability were in place at the time of such failure or refusal, and specify the necessary actions that must be taken to avoid a pro-rata reduction in public assistance benefits, including agreeing to comply with the requirements of this title consistent with any medical condition which may limit the individual’s ability to participate in work activities or notifying the district that he or she has become exempt from the requirements of this title and the right to a fair hearing relating to such discontinuance or reduction.”

Section 341-a (3) (a) provides that OTDA shall “establish in regulation a conciliation procedure for the resolution of disputes related to an individual’s participation in programs pursuant to this title.”

Section 341-a (5) provides that “participants whose failure to comply has continued for thirty days or longer” shall be given a “written reminder of the option to end a sanction by terminating the failure to comply as specified in subdivision two of this section.” This notice shall advise that “the participant may immediately terminate the sanction by either agreeing to comply with the requirements of this title consistent with any medical condition which may limit the individual’s ability to participate in work activities or notifying the district that he or she has become exempt from the requirement of this title.”

Section 341-a (6) provides that no notice shall be issued “unless it has been determined that the individual is not exempt from the requirements of this title and has determined that appropriate child care, transportation, and accommodations for disability were in place at the time of such failure or refusal to comply with the requirements of this title and no action shall be taken pursuant to this section for failure to participate in the program or refusal to accept employment if: (a) child care for a child under age thirteen (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to participate or continue participation in activities pursuant to this title or accept employment and such care is not available and the social services district fails to provide such care; (b)(1) the employment would result in the family of the participant experiencing a net loss of cash income; provided, however, a participant may not claim good cause under this paragraph if the social services district assures that the family will not experience a net loss of cash income by making a supplemental payment; (2) net loss of cash income results if the family’s gross income less necessary work-related expenses is less than the cash assistance the participant was receiving at the time the offer of employment is made; or (c) the participant meets other grounds for good cause set forth by the department in its implementation plan for this title which, at a minimum, must describe what circumstances beyond the household’s control will constitute “good cause”.

Social Services Law Section 341 is amended by adding a new subdivision (7) exempting **New York City** from complying with the conciliation process described in this Section.

Social Services Law Section 342-a (3) provides that “in the case of an applicant for or recipient of public assistance whom the district has determined is not exempt from the

requirements of this title and who is a parent or caretaker relative of a dependent child, the public assistance benefits otherwise available to the household of which such individual is a member shall be reduced pro-rata until the individual is willing to comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities”.

Social Services Law Section 342-a(4) provides that “in the case of an individual who is a member of a household without dependent children whom the district has determined is not exempt from the requirements of this title and who is applying for or in receipt of safety net assistance, the public assistance benefits otherwise available to the household of which such individual is a member shall be reduced pro-rata until the individual is willing to comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities ceases”.

Social Services Law Section 342-a(5) provides that “a recipient of public assistance whom the district has determined is not exempt from the requirements of this title and who quits or reduces his hours of employment without good cause or due to any medical condition which may limit the individual's ability to participate in work activities shall be considered to have failed to comply with the requirements of this article and shall be subject to the provisions of this section.”

Social Services Law Section 342 is amended by adding a new subdivision (6) exempting **New York City** from complying with the durational sanction provisions in this section.

OTDA is expected to issue a GIS on this change in policy for employment sanctions in New York City.

Attachments:

[Chapter](#) 562 L. 2015

**S3596** SAVINO Same as [A 4250](#) Wright (MS)

ON FILE: 02/17/15 Social Services Law

TITLE....Clarifies conciliation procedures in cases when the recipient of public assistance programs refuses to comply with employment program requirements in N.Y. city

02/13/15 REFERRED TO SOCIAL SERVICES

05/27/15 COMMITTEE DISCHARGED AND COMMITTED TO RULES

05/27/15 ORDERED TO THIRD READING CAL.991

05/28/15 PASSED SENATE

05/28/15 DELIVERED TO ASSEMBLY

05/28/15 referred to social services

06/11/15 substituted for a4250

06/11/15 ordered to third reading rules cal.227

06/16/15 passed assembly

06/16/15 returned to senate

12/07/15 DELIVERED TO GOVERNOR

12/18/15 SIGNED CHAP.562

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## LAWS OF NEW YORK, 2015

## CHAPTER 562

AN ACT to amend the social services law, in relation to clarifying notice requirements, conciliation procedures and sanctions in cases when the recipient of public assistance programs refuses to comply with employment program requirements in a city having a population of one million or more persons

Became a law December 18, 2015, with the approval of the Governor.  
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The social services law is amended by adding a new section 341-a to read as follows:

§ 341-a. Re-engagement; conciliation; refusal to participate. 1. The provisions of this section shall apply to persons who are residents of a city having a population of one million or more people.

2. (a) Consistent with federal law and regulations and this title, if a participant has failed or refused to comply with the requirements of this title and the district has determined that he or she is not exempt from such requirements and has verified that appropriate child care, transportation, and accommodations for disability were in place at the time of such failure or refusal, the social services district shall issue a re-engagement notice in plain language indicating that such failure or refusal has taken place and of the right of such participant to avoid a pro-rata reduction in public assistance benefits through the re-engagement process. "Re-engagement process" shall mean the process through which a participant may avoid a pro-rata reduction in public assistance benefits by agreeing to comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities, by notifying the district that he or she has become exempt from the requirements of this title, or by resolving the reasons for such failure or refusal at a conciliation conference. The notice shall indicate that the participant has ten days to request re-engagement with the district. The notice shall indicate the specific instance or instances of willful refusal or failure to comply without good cause with the requirements of this title and the necessary actions that must be taken to avoid a pro-rata reduction in public assistance benefits and the district has verified that appropriate child care, transportation and accommodations for disability were in place at the time of such failure or refusal.

(1) If a participant chooses to avoid a pro-rata reduction in public assistance benefits through a conciliation conference, it will be the responsibility of the participant to give reasons for such failure or refusal. The re-engagement notice shall also include an explanation in plain language of what would constitute good cause for non-compliance and examples of acceptable forms of evidence that may warrant an exemption from work activities, including evidence of domestic violence, and physical or mental health limitations that may be provided at the

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

conciliation conference to demonstrate such good cause for failure to comply with the requirements of this title. Unless as part of the re-engagement process the participant does not agree to comply, has not become exempt or the district determines as a result of the conciliation conference that such failure or refusal was willful and without good cause, no further action shall be taken.

(2) If the participant does not contact the district within ten days of the re-engagement notice, the district shall make a finding of whether the alleged failure or refusal to comply was willful and without good cause and shall consider any evidence in the possession of the district indicating that the participant has good cause and if the participant is otherwise participating in work activities, there shall be no finding of willfulness without good cause based on a single appointment or infraction.

(b) If the district determines that such failure or refusal was willful and without good cause, and that the individual is not exempt from the requirements of this title, the district shall notify such participant in writing, in plain language and in a manner distinct from any previous notice, by issuing ten days notice of its intent to discontinue or reduce assistance. Such notice shall include the reasons for such determination, the specific instance or instances of willful refusal or failure to comply without good cause with the requirements of this title, shall verify that appropriate child care, transportation and accommodations for disability were in place at the time of such failure or refusal, and specify the necessary actions that must be taken to avoid a pro-rata reduction in public assistance benefits, including agreeing to comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities or notifying the district that he or she has become exempt from the requirements of this title and the right to a fair hearing relating to such discontinuance or reduction.

3. (a) The department shall establish in regulation a conciliation procedure for the resolution of disputes related to an individual's participation in programs pursuant to this title.

(b) The district shall contract with an independent entity, approved by the department, or shall use designated trained staff at the supervisory level who have no direct responsibility for the participant's case to mediate disputes in the conciliation conference.

(c) If a participant's dispute cannot be resolved through such conciliation procedure, an opportunity for a fair hearing shall be provided. No sanction relating to the subject dispute may be imposed during the re-engagement process.

4. When any participant required to participate in work activities fails to comply with the provisions of this title, the social services district shall take such actions as prescribed by appropriate federal law and regulation and this title.

5. Consistent with federal law and this title, a social services district shall provide to those participants whose failure to comply has continued for thirty days or longer a written reminder of the option to end a sanction by terminating the failure to comply as specified in subdivision two of this section. Such notice shall advise that the participant may immediately terminate the sanction by either agreeing to comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities or notifying the district that he or she has become exempt from the requirements of this title.

6. Consistent with federal law and regulation and this title, no notice shall be issued as specified in subdivision two of this section unless it has been determined that the individual is not exempt from the requirements of this title and has determined that appropriate child care, transportation and accommodations for disability were in place at the time of such failure or refusal to comply with the requirements of this title and no action shall be taken pursuant to this section for failure to participate in the program or refusal to accept employment if:

(a) child care for a child under age thirteen (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to participate or continue participation in activities pursuant to this title or accept employment and such care is not available and the social services district fails to provide such care;

(b) (1) the employment would result in the family of the participant experiencing a net loss of cash income; provided, however, a participant may not claim good cause under this paragraph if the social services district assures that the family will not experience a net loss of cash income by making a supplemental payment;

(2) net loss of cash income results if the family's gross income less necessary work-related expenses is less than the cash assistance the participant was receiving at the time the offer of employment is made; or

(c) the participant meets other grounds for good cause set forth by the department in its implementation plan for this title which, at a minimum, must describe what circumstances beyond the household's control will constitute "good cause".

§ 2. Section 341 of the social services law is amended by adding a new subdivision 7 to read as follows:

7. The provisions of this section shall not apply to persons who are residents of a city having a population of one million or more people.

§ 3. The social services law is amended by adding a new section 342-a to read as follows:

§ 342-a. Noncompliance with the requirements of this title. 1. The provisions of this section shall apply to persons who are residents of a city having a population of one million or more people.

2. In accordance with the provisions of this section an individual who is required to participate in work activities shall be ineligible to receive public assistance if he or she fails to comply, without good cause, with the requirements of this title and the district has determined that he or she is not exempt from such requirements and has verified that appropriate child care, transportation, and accommodations for disability were in place at the time of such failure or refusal. Such ineligibility shall be for the amount and period specified in this section. Good cause for failing to comply with the requirements of this title shall be defined in department regulations, provided, however, that the parent or caretaker relative of a child under thirteen years of age shall not be subject to the ineligibility provisions of this section if the individual can demonstrate, in accordance with the regulations of the office of children and family services, that lack of available child care prevents such individual from complying with the work requirements of this title. The parent or caretaker relative shall be responsible for locating the child care needed to meet the work requirements; provided, however, that the relevant social services district shall provide a parent or caretaker relative who demonstrates an inability to obtain



needed child care with a choice of two providers, at least one of which will be a regulated provider.

3. In the case of an applicant for or recipient of public assistance whom the district has determined is not exempt from the requirements of this title and who is a parent or caretaker of a dependent child, the public assistance benefits otherwise available to the household of which such individual is a member shall be reduced pro-rata until the individual is willing to comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities.

4. In the case of an individual who is a member of a household without dependent children whom the district has determined is not exempt from the requirements of this title and who is applying for or in receipt of safety net assistance, the public assistance benefits otherwise available to the household of which such individual is a member shall be reduced pro-rata until the failure or refusal to comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities ceases.

5. A recipient of public assistance whom the district has determined is not exempt from the requirements of this title and who quits or reduces his hours of employment without good cause or due to any medical condition which may limit the individual's ability to participate in work activities shall be considered to have failed to comply with the requirements of this article and shall be subject to the provisions of this section.

6. A person described in paragraph (b) of subdivision seven of section one hundred fifty-nine of this chapter may not be sanctioned if his or her failure to comply with requirements of this title is related to his or her health status.

§ 4. Section 342 of the social services law is amended by adding a new subdivision 6 to read as follows:

6. The provisions of this section shall not apply to persons who are residents of a city having a population of one million or more people.

§ 5. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOHN J. FLANAGAN

Temporary President of the Senate

CARL E. HEASTIE

Speaker of the Assembly