

Connecticut Unemployment Insurance Integrity Legislation Increases Penalties for Employers

Three years ago Congress decided Unemployment Insurance overpayments to ineligible employees totaled in the billions of dollars. Consequently it passed legislation mandating that the fifty states pass laws to require that employers timely and adequately respond to Notices regarding unemployment insurance or risk penalties if an overpayment of benefits occurs and the overpayment can be attributed in any way to the employer. The law assumed that employer fraud or unresponsiveness led to most of these overpayments. In reality, of course, agency error and/or employee fraud tend to be the main reasons for these overpayments.

Connecticut's Unemployment Insurance Integrity Act, the state's response to the federal law became effective October 1, 2013. Although in effect for almost a year, most employers have not been aware of its existence. Connecticut's law both increases penalties against employees who knowingly make false statements leading to undeserved employee benefits and creates provisions penalizing employers who do not timely or adequately respond to Unemployment Insurance Notices. If an employee knowingly makes false statements resulting in fraudulent UI benefit overpayments, then the penalty assessed on that employee will be 50% of the overpayment for the first offense and 100% of the overpayment for any subsequent offenses. If an overpayment is determined to have occurred due to the employer's failure to appear at an unemployment insurance hearing or timely or adequately respond in writing to a request for information, the employer's proportionate share of benefits can be charged against the employer's account.

Massachusetts General Laws Chapter 151A, Section 38A was the state's response to the federal law and became effective October 29, 2013. Under that section, if the director or the director's agent of the department reviewing unemployment claims determines that an overpayment of benefits was made to an employee due to an employer's failure to respond timely or adequately to a request for information, then the employer needs to make payments to or reimburse the Unemployment Compensation Fund. This section also clarifies that a response is inadequate "if it fails to provide sufficient facts to enable the department to make the proper determination regarding a claim for benefits" but not inadequate "if the department fails to ask for all necessary information, except in any case where there has been a failure to respond."

If you have any questions about the issues addressed here, or any other matters involving Labor and Employment issues, please feel free to contact:

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Under the Connecticut Unemployment Integrity Act and Massachusetts General Laws Chapter 151A, Section 38A, employers and the third party administrators (TPAs), who tend to handle these claims and responses, must now respond more thoroughly in the same time frame in order to safeguard against a penalty being levied against them if found to be responsible for an overpayment of unemployment insurance. Additionally, employers should be cautioned to think carefully before they enter into a verbal or oral agreement with employees that the employer will not challenge the employee's claim for unemployment insurance benefits. Employers may tend to withhold information and documents because they do not want to speed up discovery and/or potentially turn over privileged documents in a situation where litigation seems probable. Further, many employers in the past did not feel compelled to respond to or challenge unemployment insurance notices. However, it is important to know that there may be consequences attributed to these decisions now if the employer is deemed to be at all responsible for the overpayment. However, in a situation likely to lead to litigation, you should review your response with an attorney. Statements on UI responses may be admissible in later proceedings and must truthfully reflect the reasons for the termination. Contradictions do not assist the defense of wrongful discharge/discrimination claims.

To see the changes to the legislation that were made to comply with the federal mandate and which constitute Connecticut's Unemployment Insurance Integrity, please follow this link: <ftp://ftp.cga.ct.gov/2013/tob/s/2013SB-00909-R02-SB.htm>.

To see the new section that was added to Massachusetts General Laws to comply with the federal law, please follow this link: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter151A/Section38A>.

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