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What Employers Need to Know About Changes to New York's Unemployment Insurance Law

Reforms to New York's unemployment insurance (UI) law to relieve underfunding in the State's system became effective last fall. The reforms came in response to a mandate in the Federal Unemployment Insurance Integrity Act enacted in 2011 requiring that states incorporate provisions into their own UI laws to, among other things, enhance penalties for fraudulent claims and impose new obligations on employers relating to responding to UI claims. The significant modifications to New York's law include increases in the taxable wage limit and weekly benefit amount; a requirement that claimants be actively seeking work to receive UI benefits; and the addition of a penalty (in addition to the repayment of benefits) upon claimants for making false UI claims.

The new law also contains two important changes impacting employers: First, employers who fail to respond to a UI claim in a timely and adequate manner will be charged for the claim *even if* the New York Department of Labor (NYSDOL) later determines the claimant is ineligible for benefits. Employers need to think twice before ignoring requests for information from NYSDOL about a UI claim or withholding information about the reason for an employee's departure. Second, UI benefits *will no longer be paid* to any claimant for any week in which the person receives "dismissal pay" or severance in excess of the maximum weekly benefit amount. However, severance pay starting more than thirty days after termination has no impact on UI benefits.

The amendments, parts of which went into effect in October 2013, others in January 2014, and the remainder becoming effective October 2014, are described in more detail below. The State also revised its NYS 50 Employer's Guide to Unemployment Insurance, Wage Reporting and Withholding Tax, which can be found here: <http://www.tax.ny.gov/pdf/publications/withholding/nys50.pdf> and launched a new online claims processing system called the State Information Data Exchange System (SIDES) to streamline communication between NYSDOL and employers regarding claims.

Significant Changes to the Law

New York's amendments to its UI law include provisions both increasing benefits for claimants, as well as provisions attempting to reign in the potential for overpayment. The major changes include:

Changes Effective October 1, 2013:

- **Penalty for Fraudulent Claims.** Previously, the New York State Department of Labor (NYSDOL) could require individuals making false UI claims to repay benefits paid as a result of the fraud. Now, anyone wilfully making a false statement to obtain UI benefits

may also be subjected to a penalty of either 15% of the benefit amount or \$100, whichever is greater.

- **Civil Action Against Claimants.** The NYSDOL has the authority to file civil actions against claimants who failed to repay UI benefits overpaid to them because they made false statements or withheld information.
- **Employer Must Provide Timely and Adequate Response to Claims.** To conform with federal law, New York enacted provisions allowing the NYSDOL to penalize employers who do not fully cooperate in the claims process by providing requested information. Under the new law, employers will not receive a credit for overpayment of UI benefits when the employer failed to either timely respond to a request for information (i.e., within 10 days) or adequately respond to a request relating to a claim.

Changes Effective January 1, 2014:

- **Increase in Taxable Wage Limitation.** Claimants must earn slightly more beginning in 2014 to qualify for benefits. The taxable wage limitation increased from \$8500 to \$10,300 in 2014 with increases up to \$13,000 for 2026.
- **Claimants Must Be Actively Seeking Work.** Prompted by federal mandates, New York now requires that claimants be actively seeking work (unless participating in a shared work program) to receive UI benefits and must maintain records demonstrating their efforts.
- **Longer Requalification Period.** Claimants who have been disqualified from receiving UI benefits due to a voluntary resignation, discharge for misconduct or discharge for refusal to accept a position must now earn ten times their weekly benefit rate to requalify for benefits. Previously, claimants needed to earn five times their weekly benefit amount to break their ineligibility period.
- **Dismissal Pay Impacts Eligibility.** Effective for claims filed after January 1, 2014, no UI benefits will be paid to anyone receiving “dismissal pay”, whether in installments or in a lump sum, if such “dismissal pay” exceeds the maximum weekly benefit amount. However, such pay commencing thirty days after the last day of employment does not impact UI benefits eligibility.

Changes Effective October 2014:

- **Weekly Maximum and Minimum Benefit Rates Increase.** The maximum weekly benefit amount will be increased from \$405 to \$420 beginning October 2014 and then gradually increased to \$450 in October 2018. Beginning October 2019, the weekly benefit amount will be linked to the state’s average weekly wage, increasing up to 50% of the average weekly wage by October 2026.

What Employers Should Keep In Mind

Do Not Ignore Requests for UI Claim Information from NYSDOL

Employers must be mindful of the consequences for failing to properly respond to UI notices and requests from the NYSDOL. Often, busy employers fail to meet deadlines for responding to such requests; in other cases, employers intentionally withhold information about the circumstances of an employee’s departure because they do not want to interfere (or have agreed not to interfere)

with a former employee's benefits eligibility. With the new law, an employer who fails to respond to a NYSDOL notice or request for information in a timely or "adequate" manner will not be credited for UI benefits paid to the claimant if the claimant is later determined to have been ineligible for benefits. A first offense is excused as well as other instances where an employer can show good cause for the deficient response.

An "adequate" employer response, according to the NYSDOL, includes information sufficient to render a correct determination on eligibility (e.g., the reason for separation), was responded to in good faith, and is thorough and detailed. Employers should, therefore, avoid representing to an employee that it will respond to a UI claim in a way that is contrary to the obligation to provide a timely and adequate response. Moreover, employers remain subject to the same obligation as claimants to refrain from willfully making false statements to obtain benefits or to reduce the amount of contributions to the UI fund.

Severance Pay May Impact Eligibility for UI Benefits

Employers who offer severance pay to departing employees should keep in mind how doing so affects UI eligibility. Effective this year, the receipt of "dismissal pay" in excess of the UI maximum weekly benefit amount (currently, \$405), renders the claimant ineligible for benefits during any weeks he or she receives the "dismissal pay." The term "dismissal pay" means one or more payments made by an employer to an employee due to his or her separation from employment, whether because of a contractual obligation, statutory obligation or otherwise. Accordingly, severance paid in exchange for signing a waiver and release of claims would likely qualify as "dismissal pay". To the extent the "dismissal pay" is paid in a lump sum, the "dismissal pay" will be allocated on a weekly basis from the day after the claimant's last day of employment. Even though the claimant may not be working while receiving "dismissal pay", this time will not be considered "total unemployment" for UI benefits purposes.

"Dismissal pay" commencing more than thirty days from the last day of employment, however, does not impact a claimant's UI eligibility. Employers may wish to structure their separation agreements with departing employees so that payments do not begin until thirty-one days post-termination to maximize the amount of compensation the former employee will receive while searching for another job. In doing so, employers must ensure that the separation agreement or severance plan or policy accurately states the timing for payment. Otherwise, if an employer delays payment contrary to its agreement, plan or policy, the employer may unwittingly run afoul of Section 198 of New York's Labor Law, which requires "wage supplements", including "separation pay", be paid *within* thirty days after the payment is required to be made.

NYSDOL Launched Online Claims Processing

Finally, NYSDOL has attempted to make it easier for employers to respond to UI claim notices and request for information through its online claims processing system, SIDES. Currently, the system has been rolled out, free of charge, to employers without third-party claims administrators. The Department eventually plans to include larger employers in roll-out. Employers may enroll in SIDES by contacting the NYSDOL unemployment division.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at (212) 219-1800 ext. 250 or visit our website at www.lawyersalliance.org for further information.

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