New "Integrity" Standards for Employers Responding to Unemployment Insurance Claims

By Maureen E. Carr, Esq.

In 2011, Congress passed the Unemployment Insurance Integrity Act ("Act") as part of the federal government's broader effort to address the growing deficit. In particular, the Act aims to prevent – or at least reduce – the amount of improper unemployment insurance ("UI") payments to ineligible claimants. The Act requires states to incorporate certain provisions into their UI laws, including heightened obligations on employers (and their agents) with respect to responding to UI claim notices and requests for information from the state.

Specifically, the Act provides that states' UI laws must require employers (and their agents) to *timely* and *adequately* respond to a state UI agency's initial request for information relating to an UI claim. Further, if an employer (or its agent) demonstrates a *pattern of failing to timely or adequately respond* to such requests, the employer's UI account will be charged for the UI benefits even if it is ultimately determined that the claimant was not eligible for benefits. Civil and criminal penalties can also be imposed. States were required to adopt the so-called "UI integrity laws" by October 21, 2013.

In the latter half of 2013, these "integrity" laws went into effect in Virginia, Maryland, and the District of Columbia. The Maryland and DC laws are fairly generic, whereas the Virginia law is very specific and one of the strictest in the country. Maryland and DC do not define "pattern of failing to timely or adequately respond," but Virginia specifically defines such failure as "four or more occasions within the 48 month period ending June 30 used for determining an employer's benefit ratio for SUI rating purposes." Maryland imposes a $15 fine per instance of failing to timely or adequately respond, and Virginia imposes a $75 fine per instance starting at the third failure, while DC does not impose a monetary penalty.

Employers should carefully reevaluate their practices with respect to responding to UI information requests in light of these new laws. Employers should establish clear protocols for handling state UI agency's information requests to ensure timely (the deadline is sometimes as short as 10 days) and adequate responses. In the past, many employers (especially those already paying the maximum UI tax rate) have simply chosen to ignore these requests. That practice could have a significant monetary impact under the integrity laws – both in terms of monetary penalties (in Virginia and Maryland) and the loss of benefit charge relief if the claimant is ultimately deemed ineligible for benefits. Finally, employers who have traditionally included in separation agreements a statement that they will not contest UI claims should discontinue this practice, as the failure to respond to a state UI agency's request for information would violate the new integrity laws.

Employers are advised to consult with their attorneys to ensure full compliance with the new UI integrity laws.

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