

Ignore No More: NJ's Amended Unemployment Compensation Law Increases Employer Reporting Obligations and Penalties

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Many employers commonly ignore requests from the New Jersey Division of Unemployment and Temporary Disability Insurance ("Division") to provide the reason they terminated an employee's employment. With the recent amendments to the state's Unemployment Compensation Law (UCL), effective July 31, 2023 (the [Amendments](#)), employers should rethink that practice. This, among other changes to the UCL, should dramatically alter the way employers deal with New Jersey unemployment compensation claims.

Summarized below are key takeaways from the Amendments.

New Employer Reporting Obligations

The Amendments add two significant employer reporting obligations that apply regardless of the reasons for an employee's separation or whether the employee applies for unemployment benefits.

Immediately upon an employee's date of separation from employment the Amendments require employers to complete and electronically submit to the Division:

1. a new form, yet to be issued, for providing information that the Division needs to determine whether a departing employee is entitled to unemployment benefits;
- New Jersey [Form BC-10](#), containing instructions for claiming unemployment benefits, which the employer must also provide to the departing employee; and
 - the email address of the employer's designated contact.

The state has long required employers to provide the Form BC-10 to employees upon separation of employment, but until now the UCL did not include administrative oversight or a mechanism for enforcement. It also did not require employers to provide a copy of Form BC-10 to the Division.

Initial Benefits Determinations

As before, the Division must make its initial benefits determination within three weeks of receiving a claim; however, the Amendments eliminate the additional two-week cushion previously available to the Division to request more information. Under the Amendments, the Division must notify the employer of any missing separation information within seven calendar days of the employer's submission or the employee's claim, whichever is earlier, and the employer has seven days to respond. The Division must decide the claim based on the information it has received as of the deadline. The Division may, however, consider an employer's late submission and alter the initial determination after providing the claimant an opportunity to respond.

Time to Appeal

Currently, the claimant or any interested party has seven calendar days from delivery of the notification of an initial determination, or ten calendar days from when the Division mails the notification to the claimant's or interested party's address, to file an appeal. Under the [Amendments](#), the employer's window for appeal is limited to seven calendar days after delivery; the claimant's time to appeal, however, is extended to twenty-one calendar days after the Division sends the notification to the claimant's last known mailing address.

Subsequent Determinations

If the Division changes its benefits determination, the same appeal process and time periods apply as with an initial determination. The [Amendments](#), however, add that if the Division's subsequent determination will reduce or end the benefits set forth in the initial determination, the Division will provide the claimant a full written explanation, and seven calendar days following receipt of the explanation to file an appeal. If the claimant timely appeals, benefits will continue to be paid as stipulated in the initial determination until the appeal is resolved.

Enhanced Penalties

Under the current law, employers are subject to a \$25 fine for every ten days that they failed to provide the benefits-related information to the Division. Under the [Amendments](#), an employer that willfully fails or refuses to furnish any required reports or information is liable for a fine of \$500 or 25% of any amount fraudulently withheld, whichever is greater.

Left unresolved is whether and to what extent the Division will seek to enforce the enhanced penalties for failure to submit the required forms or respond to requests for additional information, and there may be instances where an employer decides to take the risk. Employers may, however, take comfort in the statutory provision that makes all records, reports and information obtained by the Division from employers and employees confidential, except for unemployment benefits administration purposes, and prohibits their being subject to subpoena or admissible in evidence in any civil action or proceeding. ([N.J.S.A. 43:21-11\(g\)](#))

Overpayments

Under the [Amendments](#), a claimant will not be liable to repay overpayments if the overpayment is due to the employer's or the Division's errors or the employer's failure to provide information. If the overpayment is due, in part, to the claimant's error that is not fraudulent or knowing, the Division will determine a portion of the overpayment for which the claimant is liable, which shall not be more than 50% of the overpayment. The UCL continues to require a claimant to repay an overpayment by reason of their knowing, fraudulent non-disclosure or misrepresentation. As a general matter, however, if the Division changes its initial determination and subsequently denies benefits, claimants may still retain benefits paid where the employer fails to provide timely information and the Division will still charge the employer's unemployment account.

With the Amendment's effective date around the corner, New Jersey employers should begin putting procedures in place to ensure they will be able to comply with the law's new reporting and timing obligations. The tight mandatory reporting obligations will likely also need to be included in the planning for reductions-in-force and negotiated separations.

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