

New York Unemployment Benefits No Longer Available to Former Employees Receiving Severance

Article By:

Christopher J. Collins

Jonathan Sokolowski

Effective January 1, 2014, former employees in New York are, in most cases, ineligible for unemployment insurance benefits while receiving severance pay, pursuant to a recent amendment to **New York's Unemployment Insurance Law**. The amendment was enacted as part of a package of reforms aimed at returning New York State's Unemployment Insurance Trust Fund to solvency in the wake of the economic recession.

The amendment defines "dismissal pay" as "one or more payments made by an employer to an employee due to his or her separation," excluding "payments for pension, retirement, accrued leave, and health insurance or payments for supplemental unemployment benefits." Under the new law, an individual cannot obtain unemployment insurance benefits during any week in which his or her dismissal pay exceeds the maximum weekly unemployment benefit rate – currently \$405 and increasing to \$420 in October 2014. Ineligibility for unemployment insurance benefits will continue for each week in which the weekly severance payment exceeds the maximum weekly unemployment benefit rate. In the event the employer structures the severance payment as a lump sum, the New York State Department of Labor will employ a formula (using the former employee's prior actual or average weekly pay) to determine the number of weeks of ineligibility for unemployment insurance benefits.

The new disqualification provision only applies to applications for unemployment benefits filed after January 1, 2014, not to previously filed claims.

But there is a catch. The **disqualification does not apply when the initial (or lump sum) severance payment is made more than 30 days after the last day of employment**. In that event, the former employee can collect unemployment benefits immediately.

New York employers should keep these new unemployment disqualification provisions in mind when designing separation packages and communicating with former employees. The timing of severance payments, in particular, is a crucial consideration.

National Law Review, Volume IV, Number 20

Source URL: <https://natlawreview.com/article/new-york-unemployment-benefits-no-longer-available-to-former-employees-receiving>