
SERVICE BULLETIN

A New Direction: Tightening Eligibility for UI Benefits

January 19, 2012

In recent months we have been observing a renewed focus on limiting and controlling the payment of UI benefits. This is evident in recent state legislation and also in the changing policies of state UI agencies. We believe this results from the growing realization that the benefits paid must be balanced with the taxes collected from employers in order to restore solvency to the state UI programs.

Recent UI program changes contrast sharply with the flurry of benefit expansion initiatives in 2009 and 2010. In 2009, the American Recovery & Reinvestment Act ("ARRA") created incentives for states to grant UI benefits in situations where benefits were previously disallowed. Incentives (in the form of grants) were also made available for adding dependents allowances to UI benefit payments. Many states opted to take the incentives and to liberalize the eligibility for UI benefits. Over \$4 billion in such grants has been distributed to states that complied.

Concurrent with the ARRA - driven expansion of UI benefit eligibility, the state UI agencies were forced to deal with developments of historical proportions. The amount of UI benefits paid overwhelmed the agencies, in terms of workload and also in terms of funding. As of this date, twenty-seven states and the Virgin Islands have outstanding federal loans totaling over \$37 billion, because their UI trust funds have become insolvent.

The thrust of more recent legislation and policy has been to pull back from the expansion of benefit payments to establishing limitations on eligibility, as well as prevention and recovery of overpayments.

In June of 2011 a Program Letter from the U.S. Department of Labor to the state unemployment agencies addressed an issue that had become apparent: the inaccuracies and errors related to the payment of benefits. The Department found that the rate of improper payments was a staggering 11.2%, amounting to \$17 billion annually. In other words, it had become necessary to make a concerted effort to improve the integrity of the benefit payment system.

There is now heightened activity at the state level to prevent overpayments that occur when a person who has been receiving UI benefits goes back to work but keeps drawing UI benefits. This is the single largest cause of overpayments, accounting for 29% of overpayments. The state UI agencies are focusing on cross-matching the data collected in the Federal New-Hire Registry (including the first day of work) with the records of UI benefit payments, to more quickly identify and stop overpayments. There are also better tools now for collecting overpayments, including use of the Treasury "TOP" program to collect overpayments from income tax refunds.

The U.S. Department of Labor has partnered with eleven "high impact" states to aggressively address improper payments. The Department has also awarded approximately \$192 million to states for projects related to program integrity.

This is a good place to mention that our company continuously monitors the benefit charges assessed to client tax accounts. We cross-match the benefit charges with our database of claim and employment records and we file a protest of any benefit charges that we are unable to verify. In these times of high error rates, this function has taken on heightened importance.

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In addition to addressing the overpayment problems, there has been a quiet trend to pull back the reins on eligibility at the state level. Some sentiment has now developed that it may not be possible to simply tax our way out of the current deficit funding, at the expense of employers, without also placing more restrictions on benefit eligibility. This is a distinct change from the tenor of legislation in 2009 and 2010 that was motivated by availability of federal funds authorized by the ARRA.

Within the last year five states (AR, MO, MI, IL, and FL) have enacted laws that reduce the total number of weeks for which a person may receive UI benefits to less than 26 weeks. Previously, every state paid up to at least 26 weeks of regular UI benefits (28 weeks in Montana and 30 weeks in Massachusetts), and this had been the case for decades.

Following are some examples (by no means a comprehensive list) of legislative provisions that were enacted in 2011, to limit and/or more closely control the payment of benefits.

Florida, HB 7005. This bill revises the term “misconduct,” which results in a disqualification, to include conduct outside of the workplace and additional lapses in behavior. The bill disqualifies a person due to receipt of severance pay. It also requires a more robust initial skills review to help the claimant find new work.

Indiana, SB 86. This amendment states that an individual who is receiving UI benefits may be disqualified if the individual tests positive for drugs after a drug test given by a prospective employer or refuses to submit to a drug test. The individual who is disqualified may not resume receiving UI benefits until a negative drug test is submitted to the UI agency.

Kansas, SB 77. This bill repeals the provision that allows an individual to receive UI benefits for the one-week waiting period. It also modifies the “trailing spouse” provision (which grants benefits to an individual who moves to stay with his/her spouse) to apply only to the spouses of personnel in the U.S. armed forces or military reserves.

Michigan, SB 0806. This amendment provides that after a claimant has received UI benefits for half of his/her benefit year, a job opportunity may not be considered unsuitable because it is outside of his or her training or experience or unsuitable as to the pay rate, if it pays at least 120% of the claimant’s weekly UI benefit amount. The bill also requires that claimants must conduct a systematic and sustained search for work and report details of their work search at least monthly in order to qualify for benefits. Also, an individual who is absent from work for three consecutive days or more without contacting the employer in a manner acceptable to the employer, if notified of this requirement at the time of hire, shall be considered to have voluntarily quit without good cause attributable to the employer (resulting in a disqualification). Further, an individual claiming to have left work involuntarily for medical reasons, in order to qualify for UI benefits, must have done all of the following before leaving: (1) secure a statement from a medical professional that continuing in the current job would be harmful, (2) unsuccessfully attempted to secure alternative work with the employer, and (3) unsuccessfully attempted to be placed on a leave of absence until able to return to the same position.

Ohio, HB 153. This amendment prohibits an individual who works in seasonal employment from being paid benefits for those services for any week between two successive seasonal periods if there is reasonable assurance that the individual will return to the seasonal work in the next seasonal period.

Pennsylvania, SB 1030. This amendment tightens up the requirements for making an active search for work. The requirements include (1) registration with the Pennsylvania CareerLink system, (2) posting a resume on the system’s database, unless the claimant is seeking work in a field in which resumes are not commonly used, and (3) applying for positions that offer employment and wages similar to those the claimant had prior to his/her unemployment and which are within a 45-minute commuting distance. No work search is required if the claimant is on temporary layoff and has a recall date. Further, the Pennsylvania CareerLink system must provide documentation at least quarterly to the Unemployment Compensation Service for purposes of monitoring the work search efforts.

Rhode Island, HB 5894. This bill requires that severance or dismissal pay, whether or not the employer is legally required to pay it, shall be allocated on a weekly basis from the individual's last day of work, and the individual will not be entitled to receive UI benefits for such weeks. Previously, severance pay or dismissal pay was considered to be paid on the last day of work and this did not affect future UI benefits. This amendment is effective July 1, 2012.

South Carolina. New policies require claimants to accept job offers that pay incrementally less than their previous wages. After four weeks of receiving UI benefits, a claimant must accept a job offering 90% of his/her previous wages. The percentage drops every four weeks, to 70% after 16 weeks. After federally paid extensions kick in, the claimant must accept any job offer that pays the minimum wage.

Finally, there is concern as to whether the federal extensions of benefits (EB and EUC) provide a disincentive to search for work to the extent that they are possibly self-defeating as a policy. We do not claim to have the answer to this question. However, we noticed that in the back-to-back recessions in the early 1980's, the rate of total unemployment reached higher than during the 2007-2009 recession, yet the percentage of claimants who received benefits for 27 weeks or longer was much lower. There may be many reasons for this, but it does make one wonder whether benefit extensions are in fact a contributing cause of the increase in the long-term unemployed.

Despite the efforts to improve program integrity and to increase standards for eligibility, as well as a slight decrease in the level of unemployment, we have yet to see a meaningful reduction in the funding deficit. The federal loans to state trust funds are more or less unchanged, in aggregate, from a year ago. Unfortunately, nothing has occurred to cause us to anticipate lower UI tax rate schedules any time soon. In this environment it is especially important for companies to maintain effective controls relating to the processing of unemployment claims.

Your own company's UI tax rate(s) is greatly affected by your own experience. UI benefits that are paid to your former workers and charged to your tax account have a more pronounced impact on your tax rate when the tax rate schedules are high, as they are now. Our coordinated efforts to avoid improper and unwarranted UI benefit charges, by submitting thorough and timely responses to UI claims, represent the single most important function in controlling your tax rate.

As always, please feel free to contact us with any questions or comments.

