New Jersey Employers May Be Penalized for Failure to Timely and Adequately Respond to Informational Requests from the New Jersey Department of Labor and Workforce Development

Revised September 2020

I. The 2013 Employer Response Law

New Jersey employers that fail to timely respond to requests from the New Jersey Department of Labor and Workforce Development (NJDLWD) for information relating to employees’ claims for unemployment compensation or temporary disability insurance benefits may be penalized. Under a law enacted in 2013 (L. 2013, c. 148),1 if an employer’s failure to respond in a timely or adequate manner results in the employer’s account being charged for benefits that an employee is not entitled to, then the employer’s right to seek a reduction in those charges might be forfeited. Note that the actual failure to respond is not penalized. The new law is effective with respect to benefit payments made on or after October 22, 2013.

Some employers that have terminated employees for cause have opted on occasion not to contest the employees’ unemployment compensation claims so that the employees will receive some income while searching for new jobs. In view of this new law, those employers may want to reconsider that practice.

Under the new law, if (1) the NJDLWD makes an excess benefit payment to an employee because an employer, or the employer’s agent,2 failed to respond in a timely or adequate manner to a request from the NJDLWD for information relating to the employee’s claim for benefits and (2) the employer or the agent has a pattern of failing to respond in a timely or adequate manner to such requests, then the employer will not be granted relief for charges relating to the benefit payment.

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1 Note that sections of the New Jersey unemployment compensation and temporary disability insurance benefits laws unrelated to the discussion in this article have been amended numerous times since the 2013 law was enacted. Thus, do not rely on the text of the linked 2013 law for purposes unrelated to the discussion in this article.

2 Some employers outsource the handling of unemployment compensation and disability insurance benefit claims to services that provide claims assistance.
A pattern of failing to respond means a repeated, documented failure on the part of the employer or its agent to respond to the NJDLWD’s requests for information relating to benefit claims. However, no employer or agent will be deemed to have engaged in such a pattern if the number of failures during the previous 365 calendar days is less than (1) three or (2) two percent of the number of requests, whichever is greater.

The new law does not define what qualifies as a “timely or adequate” response. Existing law suggests that an employer is expected to respond within 10 days after the NJDLWD mails or otherwise communicates its request to the employer.

II. Reminder Regarding New Jersey Form BC-10

Employers must issue Form BC-10 – "Instructions for Claiming Unemployment Benefits" – to all New Jersey employees who are separated from employment. As a result of a 2011 law (L. 2011, c. 87) employers are required to include on Form BC-10 the following information: (1) the date the employee became unemployed, and, to the extent possible if the unemployment is temporary, the date upon which the employee is expected to be recalled to work; and (2) notification that the employee may lose some or all of the benefits to which the employee is entitled if the employee fails to file a claim in a timely manner.

The 2011 law clearly states that the law is not intended to require an employer to rehire an unemployed employee previously employed by the employer.

Form BC-10 must be given to any employee who becomes unemployed for any reason, whether the unemployment is permanent or temporary. In the past, the NJDLWD did not require employers to give Form BC-10 to employees who were laid off for fewer than seven days. The 2011 law effectively overruled this exception, such that now every employee who is laid off or terminates employment must be given the revised Form BC-10.

Questions

If you have any questions about the topics covered in this article, feel free to contact Christine Michelle Duffy, Esq. or the Pro Bono Partnership lawyer with whom you usually work, at (973) 240-6955.

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