



Changes to Washington Law Require Timely and Complete Responses to Unemployment Claims

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March 13, 2015

In response to a federal mandate requiring states to restructure their unemployment insurance laws, Washington has adopted a new law, which affects how some employers should respond to Washington's Employment Security Department ("ESD") inquiries regarding a former employee's eligibility for unemployment benefits. Specifically, in 2011, Congress passed the Unemployment Insurance Integrity Act (the "Act") to help maintain the integrity of the nationwide unemployment compensation program. The Act required each state to implement, by October 2013, legislation to prevent, detect, and reduce the improper payment of unemployment compensation benefits. Washington's legislative response to the Act creates a penalty for those employers who contribute to unemployment compensation via an experience-based payroll tax and who fail to respond adequately to ESD unemployment benefit inquiries.

Penalties to an Employer's Experience Rating for Failure to Timely Respond to an Unemployment Claim.

Washington's unemployment insurance program is funded in substantial part by employer contributions or taxes. Political subdivisions other than cities, counties and towns can elect to contribute to the unemployment compensation system either by reimbursing the state for the actual amount of unemployment benefits paid to its former workers (direct pay method) or by paying a quarterly tax that is calculated using the employer's experience rating (experienced-based system). If your agency has elected the experienced-based system, your tax rate depends on how much your former workers collect in unemployment benefits and how big your payroll is. State unemployment taxes are based on an average of the employer's layoff history over the past four fiscal years and a shared-cost (social) tax based on costs from the previous year that can't be attributed to a specific employer.

When an individual makes an initial claim for unemployment benefits, a notice is mailed to the most recent employer. WAC 192-130-050. An employer has ten (10) days to respond to the notice and provide ESD with any information that may make the applicant ineligible for unemployment benefits. Information requested from the employer on the ESD "Job Separation



Notice” form includes the employee’s title, dates of employment (and separation), whether the employee quit or was terminated, as well as whether the employee engaged in a deliberate, negligent/careless act which prompted the termination.

In 2013, the legislature amended RCW 50.29.021 to tie an employer’s experience rating account to its timely and adequate response to an ESD notice of a claim for unemployment benefits. In cases where an individual applicant makes a false statement or representation in an attempt to obtain unemployment compensation, they are subject to an additional penalty of 15 percent (15%) of the amount of benefits overpaid or deemed overpaid. Additionally, ESD may decide to recover from the claimant any overpayment. Such overpayment is often credited back to or not charged from the employer’s experience rating account. In cases where the employer or its agent failed to respond timely and adequately to an information request relating to the claim (or has a pattern of not responding), ESD may determine not to credit back the overpayment. Only “good cause” – as determined on a case-by-case basis by ESD – may excuse the failure to respond.

To meet these new requirements, an employer must respond “adequately,” meaning it must provide enough information for ESD to determine eligibility for benefits. An employer who fails to respond to a claims notice at least three times in the previous two years or in a total of twenty percent (20%) of the total current claims against the employer is considered to have a “pattern” of non-response.

Practical Tips if Your Agency Is an Experience-Based Contributor:

Create a good paper trail. Because an employer is required to respond “adequately,” be sure to investigate and document all incidents of policy violation and follow consistent progressive discipline practices. Where an employee quits, obtain written letters of resignation when possible.

Respond timely and completely to ESD requests. Employers only have ten (10) days to respond, making time of the essence. To aid in response time consider adopting the following:

- **Designate an unemployment compensation claims czar.** This person (or small group of people) should receive notices whenever an employee separates from



employment, so that they can anticipate such claims. The unemployment compensation claims czar should also have access to personnel files and authority to coordinate responses to ESD requests for information.

- **Train staff to recognize notices for unemployment benefits.** In order to best utilize the unemployment compensation claims czar, make sure mail room and other staff are well-trained to recognize claims and notices for unemployment benefits and know to route them expeditiously.

Avoid agreements with employees not to contest unemployment benefit claims that prevent your agency from responding. An employer should not agree (in writing or orally) that it will not respond to ESD inquiries related to a claim for unemployment benefits, as such an approach may create a “pattern” under the new rules. Certainly, unemployment eligibility can be a meaningful bargaining chip when negotiating a separation. But agreeing not to respond to the ESD can now be costly in the long run. Instead, consider language along the following lines:

Employer will not contest Employee’s application for unemployment benefits, subject to its obligation to provide truthful responses to the Employment Security Department (“ESD”). Employer believes that Employee should be eligible for unemployment benefits based on the circumstances of her separation, and will advise ESD that it does not oppose an award of benefits. Employee acknowledges that any final determination regarding her entitlement to benefits would be made by ESD, and is outside Employer’s direct control.

If you know the reason for discharge is likely to disqualify the employee from getting benefits, cutting a deal on unemployment benefits is problematic. Failure to respond may result in a future penalty to your experience rating, and yet you should not agree to misrepresent the reason for discharge to ESD.

If using a third-party administrator, ensure responses are timely. An employer is not excused from compliance if his/her agent fails to respond timely.