

Avoid Common Mistakes When Filing a Petition for Reassessment

Under section 304 of the Pennsylvania (PA) unemployment compensation (UC) law, the Office of UC Tax Services (OUCTS) may issue a **Notice of Assessment** to an employer to establish liability for amounts believed due. An employer that does not agree with the assessment may file an appeal, referred to as a **Petition for Reassessment**, with the UC Tax Review Office (UCTRO).

Although the names of the offices are similar, it is important to emphasize that the UCTRO is not a part of OUCTS. The UCTRO is a separate office that conducts independent reviews of determinations made by the OUCTS.

The Notice of Assessment includes detailed instructions for filing a proper appeal. The instructions should be followed carefully to avoid the following common mistakes employers make when submitting a Petition for Reassessment:

1. **Deadline/Timeliness:** An employer has **15 days** from the date shown on the Notice of Assessment to file its Petition for Reassessment. If the appeal is not filed with the UCTRO within 15 days from the date of the Notice of Assessment, the appeal is untimely. (The date of filing is determined by the way the appeal is filed, and is detailed in the department's regulations.) An untimely Petition for Reassessment will be dismissed.
2. **Factual and Legal Reasons:** If an employer disagrees with the Notice of Assessment, it must provide, at the time of filing, the factual and legal reasons why the assessment is believed to be incorrect. Factual and legal **reasons cannot be added after the appeal has been filed; all issues for which a review is sought must be stated at the time of filing.** Failing to list the factual and legal reasons for the appeal, or leaving that section of the Petition for Reassessment blank, will result in the dismissal of the appeal.

Such appeals frequently present the underlying legal issue that the workers in dispute are not employees, but are independent contractors. However, simply making such an assertion, without providing a basis for the position, is insufficient. Additionally, although an employer may argue that they do not have money to pay an assessment, or that the assessment was not "fair," these are not legal grounds and reasons for challenging the assessment.

3. **Incomplete Form:** The Petition for Reassessment form **must have all sections completed, be signed by an individual legally authorized to execute the appeal, and be notarized.** A copy of the Notice of Assessment the employer is challenging, together with the Statement of Assessment (that is, pages 1 and 2 of the assessment notice), must be attached to the Petition for Reassessment for it to be considered complete. Appeals may be dismissed for incompleteness.

[Avoid Common Mistakes When Filing continued on page 2](#)

In this Issue...

- Using Twitter to Connect with UC Claimants and Employers
- Office of UC Service Centers Begin Telephone Fact Finding
- What is Worker Misclassification?
- Treasury Offset Program
- Office of UC Service Centers Announces Operational Changes
- The Pennsylvania New Hire Reporting Program

[Avoid Common Mistakes When Filing continued from page 1](#)

4. **Misdirected/Improperly Addressed:** A Petition for Reassessment must be filed with the UCTRO, at the address indicated on the instructions that accompany the Notice of Assessment. A copy of the appeal filed with the UCTRO also must be sent to OUCTS, at the same time. As emphasized above, the UCTRO and OUCTS are distinct offices; service upon one does not constitute service upon the other. Although not required, an employer filing a Petition for Reassessment may wish to consider sending the appeal by Certified Mail or a common carrier that provides a means for tracking the mailing and proof of delivery to the appropriate program area.

If an employer avoids the common errors above, the merits of its case may be considered and a formal hearing may be scheduled.

Using Twitter to Connect with UC Claimants and Employers

The Department of Labor & Industry's communications office (formerly the press office) runs a Twitter account for the department, and one noteworthy feature of this social media application is the ability to connect directly with unemployment compensation (UC) claimants and employers.

UC claimants and employers are able to follow Labor & Industry (L&I) on Twitter for tips and information pertinent to the UC program. General questions not related to a specific claim or tax account may often be answered by the communications office directly on Twitter. For specific claim information such as claim status or payment details, UC claimants should login to their account at www.uc.pa.gov or call the UC service center at 888-313-7284. Employers with specific questions about their UC tax account should call the Employer Contact Center at 866-403-6163.

IMPORTANT REMINDER: Do not tweet personal or confidential information regarding UC claims or tax accounts to the department over Twitter, as Twitter is a public forum, and anyone can see and access the information that you send.

This convenient method of contacting the UC office is just one way that the department is working to improve the user experience for UC claimants and employers. The use of social media is an important tool in connecting quickly and directly with claimants and employers -- a tool that Governor Wolf's administration understands well and continues to promote the use of in various agencies' day-to-day operations. The governor's commitment to social media is echoed in the recent hiring of a digital director in the communications office. Emily Weltmer joined L&I in February and is responsible, among other things, for all department digital media, including the LION, Facebook, YouTube, and Twitter.

The Department of L&I's Twitter feed also includes information about job fairs, updates on UCMS and JobGateway® system maintenance, and Secretary Kathy Manderino's events and speeches throughout the commonwealth. Be sure to follow the department on Twitter @PALaborIndustry.

What is Worker Misclassification?

Worker misclassification is a nationwide problem that negatively impacts Pennsylvania's economy and UC Fund, and creates an uneven playing field for employers who properly classify their workers. Worker misclassification occurs when employers treat certain employees as independent contractors when they should not be classified as such. This may be done to reduce payroll and other costs. Incorrectly classifying a worker as an independent contractor causes harm to the worker by withholding rights that belong to legitimate employees.

Later this year Pennsylvania will begin a campaign to educate Pennsylvania's employers and workers on their rights and the need to classify or be classified correctly. Under the PA UC Law, a worker performing

[Worker Misclassification continued on page 3](#)

Worker Misclassification *continued from page 2*

services for remuneration is presumed to be an employee, unless the employer shows that (1) “the individual has been and will continue to be free from control or direction over the performance of the services involved, both under his or her contract of service and in fact, and (2) as to these services, the individual is customarily engaged in an independently established trade, occupation, profession or business.”

For a worker in the construction industry, in addition to these two criteria, the Construction Workplace Misclassification Act (Act 72) requires that the worker have a written contract to perform such services in order to be an independent contractor.

The secretary of L&I recently held in an administrative adjudication that the “written contract” must be specific to the project for which the individual will be performing services.

PA UC Law requires an examination of the facts to determine if the worker is an independent contractor or an employee. As such, an employer designation, either verbally or in writing, that an individual is an “independent contractor,” a statement by an individual that he or she is an “independent contractor,” issuance of a Federal Form 1099, and/or failure to withhold taxes or pay workers’ compensation premiums are not conclusive in determining “independent contractor” status.

Business owners should maintain sufficient documentation to support the reasons for classifying any individual as an “independent contractor” to protect their business and employees.

Incorrectly classifying workers not only harms the workers, but also puts the business at risk of legal action and owing back taxes, interest, penalties, and fines. If a business fails to properly classify a construction worker as an employee, the PA Department of Labor & Industry may assess civil penalties of up to \$1,000 for the first violation and up to \$2,500 for each subsequent violation. L&I may also seek a stop-work order from a court for intentional violations.

If you have questions regarding the classification of workers, please call the UC Employer Contact Center at 866-403-6163, on weekdays from 8 a.m. until 4:30 p.m.

Office of UC Service Centers Announces Operational Changes

On March 16, 2016, the Office of UC Service Centers (OUCSC) launched an enhancement to its telephone system. A customer seeking unemployment services is greeted by the automated system and selects services in English or Spanish. The customer selects the type of service he or she is seeking and the call is routed to the first available agent in any of the UC service centers. Note: Spanish customers may receive one of the designated Spanish agents or be serviced by any agent with the assistance of a language line interpreter. Previously, calls were routed to a service center based upon a geographical distribution model. The new distribution system has resulted in fewer busy signals and reduced wait times for both our claimant and employer customers.

Office of UC Service Centers Begin Telephone Fact Finding Process to Ensure Timely and Accurate Separation Information is Received

OUCSC has begun a new process to ensure we receive timely and accurate information regarding a claimant’s reason for separation. A claimant who indicates a reason for separation from work other than lack of work is transferred to a UC examiner at the conclusion of the claims taking process for fact finding. At the conclusion of the fact finding interview, the examiner will contact the separating employer by telephone. You can identify the caller by noting that the origination of the call (caller ID) will be from the OUCSC’s toll free number 888-313-7284. To help us better serve you, please direct OUCSC calls to the appropriate person (or

Telephone Fact Finding *continued on page 4*

Telephone Fact Finding continued from page 3

department) within your company who will provide information regarding the separation. Note: If your company has enlisted the services of a third party administrator, the OUCSC will use that party as the first point of contact. If no response is received from your designated administrator, you may be contacted for information.

The following information may be requested by the examiner during the telephone call:

- Address verification
- Employer representative name, title, telephone with extension, fax and/or email
- Verification of the reason for separation and an opportunity to complete fact finding by telephone
- Options for receiving fact finding documents by fax, email or U.S. Mail if you choose to respond in writing
 - If you opt to receive your information by email, the document will be ENCRYPTED. The message recipient will receive an email indicating he or she has received a secure message from the sender. The recipient will need to register with the commonwealth's secure email system and enter his or her credentials before reading the secure message.

Employers returning fact finding documents to the examiner must follow these guidelines:

- Complete all requested information in its entirety. Use "N/A" if the question does not apply to the situation. Employers are encouraged to add a summary of the reason for separation. Attach rules, handbooks, union agreements or discipline that supports the reason for separation.
- Return correspondence to the provided fax number, email resource account or mailing address. We encourage employers to submit fact finding information and documents by fax or email so that they are received timely.

Under Section 302(a)(2) of the PA UC Law, an employer is responsible to ensure that information requested by mail or electronically regarding the individual's eligibility for compensation is returned to the examiner timely and completed adequately. If a claimant is overpaid UC benefits because the employer or agent of the employer fails to respond in a timely or adequate manner, the employer's account will no longer be credited when the overpayment is established. **The employer's account will be charged with the UC benefits overpaid to the claimant.**

- Untimely Response - A response is untimely if it is filed more than 14 days after the OUCSC's request for information is mailed or transmitted electronically to the employer or agent.
- Inadequate Response - A response is inadequate if it misrepresents or omits facts that, if represented accurately or disclosed, would have been a basis for the OUCSC to disqualify the individual from receiving compensation.

Employers may call our employer toll free number 866-223-4718 during regular business hours to speak with an agent. If an agent is not available or it is outside of the OUCSC's hours, employers will be directed to a voice mail system. Employers are encouraged to leave a clear message that includes the company name, representative name and telephone number with extension. If the employer is calling regarding a former employee's claim, include the employee's full name and last four digits of the Social Security number.

Treasury Offset Program

Federal law permits states to recover certain UC debts from a claimant's federal income tax refund under the Treasury Offset Program (TOP), which is administered by the United States Department of the Treasury (Treasury). TOP applies to overpayments incurred as a result of fraud or unreported earnings.

To assist the UC service centers in determining whether a claimant has unreported earnings, employers should always respond to requests for wage verification and wage information. This allows L&I to assess overpayments and penalties to claimants who received benefits fraudulently and to credit the employer's account properly.

Since the program's inception in Tax Year 2011 through Tax Year 2015, L&I has recouped approximately \$75.4 million in fraudulent overpayments via federal tax refunds.

The Pennsylvania New Hire Reporting Program

The Pennsylvania New Hire Reporting Program mandates that all employers report basic information about all newly hired and re-hired employees in accordance with state and federal law. Administered by the Center for Workforce Information and Analysis (CWIA) within L&I, the Pennsylvania New Hire Reporting Program aids in the collection of child support from non-custodial parents.

Information provided by employers is matched against files containing the names of non-custodial parents who owe child support. When a match occurs, a notice is immediately sent notifying the employer to garnish that employee's wages, thus expediting child support payments. For calendar year 2015, in excess of \$19.4 million in child support monies was collected due to the new hire cross match. Since 2010, child support collections activity from wage garnishments issued to obligors totaled \$154.1 million through December 2015, an average of \$2.1 million per month.

Data collected from the Pennsylvania New Hire Reporting Program is also used to detect fraud in the UC and workers' compensation programs. Since 1998, this matching process has identified in excess of 83,200 UC fraud overpayments resulting in the recovery of \$36.3 million.

CWIA continues to increase public awareness of the New Hire Program (and increase employer compliance with reporting laws) by conducting outreach meetings with employers at local PA CareerLink® offices, partnering with the Department of Human Services at the local level through the Office of Child Support Enforcement, and educating and informing both the public and employers about the importance of reporting new hires.

To learn more about the Pennsylvania New Hire Reporting Program and reporting process, please visit www.pacareerlink.pa.gov#reportNewHireLink, and click in the "Report New Hires" section to proceed to the program homepage.

UC Issues Update is published by the Pennsylvania Department of Labor & Industry on a quarterly basis. Questions, comments and feedback can be sent via email to uc-news@pa.gov. General UC Tax information is available by calling 717-787-7679 or outside the Harrisburg area, toll free 866-403-6163 from 8 a.m. to 4:30 p.m. If you have questions regarding UC benefit charges to your account, please call 717-787-4677 from 8 a.m. to 4:30 p.m. **If you suspect fraud, report it online at www.uc.pa.gov under "Report Fraud," or contact 800-692-7469.**

Auxiliary aids and services are available upon request to individuals with disabilities. Equal Opportunity Employer/Program