Governor Wolf Signs Act 144 Amending PA Unemployment Compensation Law

On Nov. 3, 2016, the Governor signed Act 144 into law amending the Pennsylvania (PA) Unemployment Compensation (UC) Law. Act 144 will help to ensure that seasonal workers, such as construction, and those who need UC benefits will have access to those funds. For applications for benefits filed on, or after, Jan. 1, 2017, Act 144 reduces the percentage that a claimant must earn in one or more quarters outside of the high quarter from 49.5 percent to 37 percent. It is estimated that this change will provide UC benefits to an additional 44,000 individuals.

Act 144 also reduces the minimum weekly benefit rate from $70 to $68 and the maximum weekly benefit rate from $573 to $561. Applications for benefits filed before Jan. 1, 2017, will not be impacted.

Act 144 adopts several cost-saving changes to ensure that the PA UC trust fund reaches solvency. They include:

- A reduction to the weekly benefit rate for all claimants in 2018, and again in 2019, if the UC fund does not reach certain solvency benchmarks.
- A limitation on the percentage that the maximum weekly benefit rate may increase beginning in 2020.
- Triggers to prevent an increase in the maximum weekly benefit rate beginning in 2020, if the UC fund does not reach certain solvency benchmarks.

Act 144 makes changes to the PA UC Law’s fraud provisions to further the integrity of the system. These changes include increases in fines against claimants convicted of UC fraud and employers convicted of willful failure to pay UC taxes, the number of penalty weeks assessed against claimants, and the length of time to serve penalty weeks. Act 144 also increases penalties against incarcerated claimants who make false statements to obtain UC.

Additionally, Act 144 makes the following changes to the PA UC Law:

- Increases the employer penalty for failure to file its quarterly wage reports timely or in the manner prescribed by the department.
- Increases the reserve ratio factor for employers with the lowest percentages on the table in Section 301.1 of the PA UC Law.
- Increases the maximum basic rate for 2017 to .0905 and for 2018 to .0895.
- Increases the interest rate for late/unpaid UC taxes from .75 percent per month to 1 percent per month effective Jan. 1, 2018.
- Provides for an amnesty program to be conducted in 2017.
- Increases the amount of time the department may collect unpaid UC taxes from four years to six years starting with wages paid on or after Jan. 1, 2017.
- Increases fines for any employer, officer or agent of an employer who violates the prohibition against agreements for an employee to waive, release or commute his/her rights to UC.

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2017 Unemployment Compensation Amnesty Campaign

In 2013, the Pennsylvania Department of Labor & Industry (L&I) established and launched an UC Amnesty Program "Make It Right." The program was directed at recouping money owed to the UC trust fund due to the overpayment of benefits to claimants and underpayment of UC tax liabilities from employers.

The UC Amnesty Campaign netted more than $16 million in outstanding UC overpayments and tax liabilities and provided public awareness to the seriousness of these issues.

Act 144 of 2016, signed by Governor Tom Wolf on Nov. 3, 2016, amended the PA UC Law to provide for a new 2017 UC Amnesty Program.

The 2017 UC Amnesty Program, a reprise of the original "Make It Right" campaign, will run for three consecutive calendar months. L&I has designated the amnesty period from July 1, 2017 to Sept. 30, 2017.

The guidelines for the program with instructions on how to participate were published in the PA Bulletin on April 1, 2017. A public awareness campaign is being coordinated for the months prior to the start of the program, to help alert the public to the benefits of participating.

Be on the lookout for updates on the “Make It Right” UC Amnesty Program in the coming months.

Avoid Common Mistakes When Filing a Petition for Reassessment

Under section 304 of the PA 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.

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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.

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.

Employee Mandatory Postings Available Free of Charge

Pennsylvania employers are required to post certain state-required employee notices in their workplaces so employees have access to and information about applicable labor laws.

These posters can be downloaded for free from L&I’s Mandatory Postings for Pennsylvania Employers webpage. Each poster link identifies the name of the poster, which employers are required to post, and contact information should employers require additional information.

All state-required employee notices must be posted in a conspicuous place so that they can be seen and read by employees. Failure to post notices can result in penalties and possible fines.

In addition to the state-required employee notices, all government agencies and private employers with government contracts over $25,000 are required to publish and post an anti-drug policy statement in accordance with the Drug-Free Workplace Act of 1998.

If you would like to request copies of these posters to be mailed to you, please call 717-783-8794.

Change in UC Service Center Hours

UC service centers no longer accept calls on Wednesdays and Fridays. Service centers will take calls Mondays, Tuesdays and Thursdays from 8:00 AM to 4:00 PM, at 888-313-7284.

This change is due to reductions in UC staffing and corresponding federal funding. The department is appropriately reducing costs while maintaining customer service.

Please note, Pennsylvania employers still have 24-hour access to the UC service center employer line at 866-223-4718. Employers with questions or concerns regarding benefit charge issues or relief from charges may call the Employer Information Center at 717-787-4677 from 8:00 AM to 4:00 PM or email inquiries to UIEMPCHARGE@pa.gov.
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 withhold child support, thus expediting child support payments. For calendar year 2016, in excess of $20.7 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 $174.9 million through December 2016, 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 88,000 UC fraud overpayments, resulting in the recovery of $38.6 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 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.