

L&I Welcomes New Secretary and Appoints New UC Deputy Secretary

During the past several months, the Department of Labor & Industry (L&I) has welcomed a new department secretary and announced the appointment of a new deputy secretary to head the unemployment compensation (UC) system.

After serving as acting secretary for nearly five months, Jerry Oleksiak became the 35th secretary of L&I on Jan. 30, 2018.

Before joining L&I, Jerry most recently served as president of the Pennsylvania State Education Association (PSEA) – the largest professional association in the commonwealth. Prior to becoming president in 2015, he served as PSEA vice president, treasurer, and as a member of the board of directors.

Jerry is especially proud of the more than three decades he spent as a classroom teacher, most of that time as a special education teacher, for the Upper Merion Area School District in King of Prussia. He also served as president of the Upper Merion Area Education Association (UMAEA).

In addition, William “Bill” Trusky, Jr. has been named deputy secretary for UC programs.

Bill was previously the director of L&I’s Office of Legislative Affairs. Prior to that position, he served for seven years as the secretary of the Workers’ Compensation Appeal Board. He also served as the government relations director for the Mid-Atlantic Laborers’ Union and was a research analyst for the House Labor & Industry Committee.

Both Jerry and Bill are looking forward to implementing changes to create a modern and efficient UC system that is responsive to the needs of both businesses and claimants.

Treasury Offset Program

The Treasury Offset Program (TOP), administered by the United States Department of the Treasury, is designed to recoup overpayments paid to claimants as the result of fraud or unreported earnings, and unpaid UC taxes from employers. Federal law permits states to recover certain UC debts from both claimants’ and employers’ federal income tax refunds.

Since the program’s inception in Tax Year 2011 through Tax Year 2016, TOP has recouped approximately \$102.5 million from claimants and in excess of \$3 million from employers via federal income tax refunds.

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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 information allows L&I to identify when a claimant receives UC benefits fraudulently, to assess the appropriate overpayments and penalties, and to credit the employer's account properly.

Unemployment Compensation Fraud Scheme Offenders Sentenced

The U.S. Attorney's Office for the Middle District of Pennsylvania recently announced the sentencing of a Tennessee couple in a multi-state unemployment compensation (UC) fraud scheme.

According to the U.S. Attorney's Office, Earl Lafayette Hall of Arlington, Tennessee, and his wife, Renita Blunt, applied for Veteran's UC benefits under the UC for Ex-Service Members Program, which is federally funded by the U.S. Department of Labor and administered by the states. Hall assumed the identity of 10 individuals between 2013 and 2014, and Blunt assumed the identity of one individual, to fraudulently receive benefits under this program.

US District Court Judge Sylvia H. Rambo sentenced Hall to 116 months imprisonment and three years of supervised release for conspiracy, mail fraud, money laundering and aggravated identity theft. Blunt was sentenced to 29 months imprisonment and three years of supervised release for conspiracy to commit mail fraud and aggravated identity theft. Hall was also ordered to pay \$96,431 in restitution and Blunt \$38,633 in restitution to the Pennsylvania, Hawaii and Utah departments of Labor.

The Pennsylvania Department of Labor & Industry's Internal Audits Division and the Office of UC Benefits and Policy assisted with the investigation in this case.

UCMS Basic Account Information Confirmation or Update

Beginning in March of 2018, employers and employer representatives using UCMS will be directed to a new confirmation page upon logging into an account. When logging in, a user will be required to confirm basic account information if it has not been done within the past 365 days.

The information to be confirmed or updated includes:

- Contact information and notification preferences
- Address information
- Owner/Responsible party information

The continued maintenance of employer account information will help to ensure that the appropriate parties within an organization receive important tax information in the manner specified in the organization's account.

For more information regarding the new confirmation process, please contact the Employer Contact Center at 866-403-6163 Monday through Friday from 8 a.m. until 4:30 p.m.

What is Worker Misclassification?

Worker Misclassification is a nationwide problem which negatively impacts Pennsylvania's economy and Unemployment Compensation 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. 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 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.

Pennsylvania's 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 Pennsylvania 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. Labor & Industry 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., Eastern Time.

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).

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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.
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 the Department of Labor & Industry's (L&I) [Mandatory Postings for Pennsylvania Employers](#) webpage. Each poster link identifies the name of the poster, which employers are required to post it, and contact information should employers require additional information.

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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.

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 8:00 AM to 4:00 PM. If you have questions regarding UC benefit charges to your account, please call 717-787-4677 from 8:00 AM to 4:30 PM. **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