

August 29, 2013

New Jersey Law Penalizes Employers for Failing to Timely Respond to Requests Regarding Unemployment Insurance

By Stacey Adams and Jessica Agarwal

On August 19, 2013, New Jersey enacted legislation implementing the federal Trade Adjustment Assistance Extension Act, which penalizes employers who fail to timely respond to requests for information from state unemployment offices. The legislation amends New Jersey's Unemployment Compensation Law and is designed to ensure that employers respond promptly to requests for information concerning unemployment and temporary disability claims. Pursuant to the new legislation, if (1) the Division of Unemployment and Temporary Disability Insurance (the Division) makes an error in paying a benefit because an employer failed to respond in a timely and adequate manner to a request from the Division for information relating to the claim, *and* (2) an employer has established a pattern of failing to respond to such requests, then the Division cannot relieve the employer's account of the erroneously charged benefit payments. The law applies to benefit payments made on or after October 22, 2013.

An "erroneous benefit payment" is defined in the law as a benefit payment that would not have been made except for the failure of the employer to respond in a "timely or adequate" manner. The statute defines a "pattern of failing" as a "repeated documented failure on the part of the employer... to respond to requests from the [D]ivision... for information related to a claim for benefits." However, such a pattern will not be found if the number of failures is (i) less than three, or (ii) less than two percent of the total number of requests from the Division, whichever is greater. Existing language in the statute requires employers to respond to requests from the Division within 10 days after mailing (or electronic mailing) of such request so, presumably, responding within this 10 day time frame is necessary for the response to be considered "timely." The law does not specify what constitutes an "adequate" response.

Previously, New Jersey law precluded an employer from contesting any erroneous benefit payment already made to an employee if the error was a result of the employer failing to timely respond to an information request, but allowed for the benefit payment to be adjusted going forward in accordance with information provided by the employer.

Some states, such as Minnesota, South Carolina, Wyoming, and Iowa, have passed similar laws that not only refuse to credit employers' unemployment insurance accounts for erroneous payments, but go even further by imposing an additional penalty that requires the employer to refund the state's unemployment account with the amount of the overpayment. The New Jersey law does not provide for this additional penalty.

Employers in New Jersey and elsewhere who have a practice of not challenging or responding to unemployment claims must now consider the monetary impact of the new legislation. New Jersey employers who fail to respond to information requests from the Division will not have their unemployment accounts relieved of overcharges, which could in turn impact their experience rating and cause contribution amounts to increase in future years. If employers do respond to unemployment requests, however, they are cautioned to answer honestly and provide the Division with truthful information—even if providing such information could result in the employee being denied unemployment.

[Stacey Adams](#) is a Shareholder, and [Jessica Agarwal](#) is an Associate, in Littler Mendelson's Newark office. If you would like further information, please contact your Littler attorney at 1-888-Littler or info@littler.com, Ms. Adams at sdadams@littler.com, or Ms. Agarwal at jagarwal@littler.com.