

Employer Reporting Obligations To Change Under New Jersey Unemployment Compensation Law, by Christopher Nucifora, Esq., & Erik Sardiña, Esq., 7-18-2023

New Jersey employers as well as businesses outside the state with New Jersey employees should start preparing for new reporting obligations and other changes to New Jersey's Unemployment Compensation Law prompted by amendments signed into law last year by New Jersey Governor Phil Murphy.

The legislation was in response to the processing delays and wait times seen during the time of high unemployment during the coronavirus crisis. The changes, which go into effect July 31, were made to increase the state's unemployment insurance system's efficiency and expedite timely benefits payments, according to the Governor's office. Along with the changes comes significantly increased penalties for non-compliance.

New Reporting Obligations

Among the changes are new reporting obligations that are invoked with the separation of an employee.

Under current law, New Jersey employers must provide terminated employees with Form BC-10, which provides instructions for claiming unemployment benefits. As of July 31, employers must also now "immediately and simultaneously" send electronically a copy of Form BC-10 to the New Jersey Department of Labor and Workforce Development's (DLWD) Division of Unemployment Insurance.

There will also be a new form issued by DLWD that will provide directions to all employers "regarding what information the division requires employers to provide to [them] by electronic means immediately upon a separation from employment sufficient to enable the division to make a benefit determination." This form will need to be submitted regardless of whether the separated employee applies for unemployment benefits. Employers should submit this new form at the same time they submit the copy of the BC-10 Form.

The language of the legislation asks for submission of information to DLWD electronically. But the Commissioner does have "the discretion to establish by rule an alternate method or methods for employers to provide the required information to the division and for the division to provide the required notifications to an employer in circumstances where it is established, to the satisfaction of the commissioner, that the employer is unable to provide the information to the division or is unable to receive notifications from the division by electronic means."

Bottomline employers have no excuse not to provide the required information.

An employer who fails to make the immediate and simultaneous disclosure to the department could be liable to penalties for "willful failure to furnish reports." The division will "notify the employer by electronic means not more than seven calendar days after the department receives the disclosure of any failure of the employer to provide all of the information needed by the division to make a benefit determination."

Further, there are several changing deadlines to be aware of including that employers must respond to requests for information from DLWD within seven days of that request being made, shortening the ten-day timeline currently allowed under existing law.

Fines

Beginning July 31, employers that fail to comply with furnishing any required reports or information will be subject to a fine of \$500 per day, or 25% of any amount fraudulently withheld, whichever is greater.

Overpayment Liability

There are also changes to an employer's liability for benefit overpayments, which is now based on an allocation of fault. If the overpayment was due to an employer or DLWD's error, then the claimant's not liable to repay the amount of the overpayment as had been the case prior to the law change.

Kaufman Dolowich Can Help

Employers should reassess their unemployment practices given the pending changes. Kaufman Dolowich can assist employers with reviewing and revising their processes and with any assistance they may need in complying with the pending changes impacting New Jersey's Unemployment Compensation Law.

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