

PUBLICATION

Georgia May Give Employers Three Strikes for Failing to Respond to Unemployment Claim Notices But Other States are Not as Lenient

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Due to the recession, unemployment insurance (UI) claims significantly increased. UI claims weren't the only thing to increase, however. The percentage of estimated UI benefit overpayment also increased.¹ In light of these and other spending issues, in late 2009, President Obama signed Executive Order 13520 to strengthen efforts to eliminate improper payments in programs administered by the federal government. In response, the DOL focused on the UI Program in which it is tasked with monitoring and followed up with a *Call to Action* in 2011 to ensure that payment integrity remains a top priority. This resulted in Congress passing the Unemployment Insurance Integrity Act (the "Act").

The Act requires states to incorporate provisions into their unemployment insurance laws that require all employers to provide a timely and adequate response to the state's request for information concerning unemployment claims. Generally, if the employer (or its agent) establishes a pattern of failing to timely or adequately respond to the request for information, the employer's UI account will be charged for the UI benefits even if the claimant is later found ineligible for benefits. The Act does not define "pattern of failure" but it gives the state freedom to not only define the term but to impose other sanctions. The Act required full compliance from all states no later than October 21, 2013. States that did not comply risked losing federal subsidies for unemployment benefits, which would put employers at risk of losing the 5.4% maximum Federal Unemployment Tax Act credit.

Georgia, one of the last states to comply, issued a new rule at the end of last year that defines a "pattern of failure" as failing to respond to "three or more individual claims" within the "current calendar year."² The employer's account will be charged and it "may not be relieved of charges, regardless of whether the associated determination to pay benefits is later reversed on appeal or if an overpayment is established." The rule does provide a "substantial good cause" exception; however, the standard seems difficult to meet.³ Either way, employers should plan to respond within the time period allowed for all UI notices.

For example, Georgia may have a three strikes rule, but many states give much less room for error. Texas law defines a "pattern of failure" to respond timely or adequately as "at least two prior occasions." In Texas, the employer has 14 days to respond to the request for information. Alabama also defines a "pattern of failure" as failing to adequately or timely respond on two or more occasions. In Alabama, the employer has 15 days to respond to a UI notice. Yet other states took a strict liability approach. The Florida law does not mention or define "pattern of failure," which means the employer will be charged after the first offense. In Florida, the employer now has to respond within "20 days after the mailing date of the notice." Tennessee and Louisiana also charge the employer on the first offense.

In the new laws, most states maintain a short response time while requiring more information from the employer. Meeting the demands could prove challenging for employers that do not plan ahead for timely responses. Therefore, employers should develop a process for reviewing the circumstances of all terminations, whether employee or employer initiated, even before a claim is received so that the employer is prepared to timely respond.

¹ The integrity of a state unemployment program is measured by the accuracy of unemployment benefit payments and denied claims. The U.S. Department of Labor (DOL) reported that in 2011 alone, the estimated amount of federal and state UI benefit overpayments was \$14 billion. Another report by the DOL estimated that between fiscal year 2009 and 2012, 33 states had error rates of 10 percent or higher (almost half (24) had a rate over 12% and 16 states' rates exceeded 14%), resulting in substantial overpayments of UI benefits to claimants.

² The Georgia Department of Law implemented this rule to comply with the Act because the state legislature did not pass the legislation by the deadline. There will likely be new legislation this year codifying this rule.

³ The rule defines "substantial good cause" as "extenuating circumstances which prevented the timely or adequate filing by the employer, or the employer's agent, as appropriate, and . . . such extenuating circumstances were beyond the employer's or the employer's agent's control."