



November 2011  
Unemployment Changes

The message below pertains to a bill amendment that has passed both houses of congress. The US Senate added this amendment to the free trade agreements, and it may impact Employers and Agents that do not respond "timely and adequately" to Unemployment claims. In the past, several employers have used a 'no response' system for unemployment claims, which indicated the employers' wish not to protest the specific claim benefit/payment. In other words, a lack of response meant employers were OK with paying the claimant the UI benefits.

This amendment listed below may put this practice in to question. As this article indicates, should a State's unemployment Agency determines the Employer and or Agent establishes a pattern of not providing information "timely and adequately", the employer would loose the ability to dispute benefit charges altogether.

*The overwhelming support for the legislation authorizing the free trade agreements was apparent in House floor action on October 12<sup>th</sup> as the House voted 307-122 to concur in Senate amendments to HR 2832. The bill as passed by the Senate and concurred in by the House can be found at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr2832enr/pdf/BILLS-112hr2832enr.pdf>.*

*The UI offset amendments inserted in the Senate received no attention in the floor debate about the bill because of the major policy items addressed in the legislation.*

*The legislation which will no doubt be approved by President, includes the provision (Section 252) requiring that states prohibit relief from charges to employer UI accounts if the UI agency determines that (A) the payment was made because the employer or an agent of the employer, was at fault for failing to respond timely or adequately to the request of the agency, and (B) the employer or agent has established a pattern of failing to respond timely or adequately to such requests.*

*The US Department of Labor will first interpret what is meant by the legislation in determining whether an employer or an agent of the employer "was at fault" for failing to respond "timely or adequately" and whether the employer or agent had established a "pattern" of failing to respond timely or adequately to agency requests for information relating to the claim for compensation. After initial interpretation by USDOL, states will be obligated to adopt the provisions of the new requirements as a minimum, with continuing authority to penalize employers by prohibiting relief from charges to their accounts for failing to respond even when there is a first instance of failing to respond.*

*Note: the new law is not limited to requests for separation information, and could be applied to requests for information with respect to individual weeks claimed.*

*The new minimum provisions will apply to erroneous payments established two years after enactment (October 2013). Other UI related amendments included in HR 2832 include*

- 1. (Section 251) Requiring states to assess a penalty of 15% of the amount of an erroneous unemployment compensation payment if the agency determines that the payment was made due to fraud committed by the individual. The penalty applies not only to state UI payments, but also to unemployment compensation paid to those unemployed who were federal employees, service members, TAA recipients, disaster unemployment recipients, EUC, FAC, and regular EB.*

*(Section 253) Requiring employers to include rehired employees to the National New Hire data base.*

Yours truly,

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