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**What Employers Need to Know About Changes to
New York's Unemployment Insurance Law**

N.B. This Alert is an update of a prior Legal Alert that highlighted significant amendments to New York's unemployment insurance laws that were made in 2014. The 2022 updates are noted in italics.

Reforms to New York's unemployment insurance (UI) law to relieve underfunding in the state's system became effective in the Fall of 2014. The reforms came in response to a mandate in the Federal Unemployment Insurance Integrity Act enacted in 2011 requiring that states incorporate provisions into their own UI laws to, among other things, enhance penalties for fraudulent claims and impose new obligations on employers relating to responding to UI claims. The 2014 modifications to New York's law include increases in the taxable wage limit and weekly benefit amount; a requirement that claimants be actively seeking work to receive UI benefits; and the addition of a penalty (in addition to the repayment of benefits) upon claimants for making false UI claims.

The 2014 law contained two important changes impacting employers: First, employers who fail to respond to a UI claim in a timely and adequate manner will be charged for the claim even if the New York Department of Labor (NYSDOL) later determines the claimant is ineligible for benefits. Employers need to think twice before ignoring requests for information from NYSDOL about a UI claim or withholding information about the reason for an employee's departure. Second, UI benefits will not be paid to any claimant for any week in which the person receives "dismissal pay" or severance in excess of the maximum weekly benefit amount. However, severance pay starting more than thirty days after termination has no impact on UI benefits.

The 2014 amendments are described in detail below. *In 2022, New York State also revised its NYS 50 Employer's Guide to Unemployment Insurance, Wage Reporting and Withholding Tax, which can be found here: <https://www.tax.ny.gov/forms/publications/wt/nys50.htm>.*

A Summary of the 2014 Changes to the Law

New York's amendments to its UI law include provisions both increasing benefits for claimants, as well as provisions attempting to reign in the potential for overpayment. The major changes include:

- **Penalty for Fraudulent Claims.** Prior to the 2014 amendments, the New York State Department of Labor (NYSDOL) could require individuals making false UI claims to repay benefits paid as a result of the fraud. Post the 2014 amendments, anyone willfully making a false statement to obtain UI benefits may also be subjected to a penalty of either 15% of the benefit amount or \$100, whichever is greater.
- **Civil Action Against Claimants.** The NYSDOL has the authority to file civil actions against claimants who failed to repay UI benefits overpaid to them because they made false statements or withheld information.

- **Employer Must Provide Timely and Adequate Response to Claims.** To conform with federal law, New York enacted provisions allowing the NYSDOL to penalize employers who do not fully cooperate in the claims process by providing requested information. Under the 2014 law, employers will not receive a credit for overpayment of UI benefits when the employer failed to either timely respond to a request for information (i.e., within 10 days) or adequately respond to a request relating to a claim.
- **Increase in Taxable Wage Limitation.** Claimants must earn slightly more in order to qualify for benefits. The taxable wage limitation increased from \$8,500 to \$10,300 in 2014 with increases up to \$13,000 for 2026.
- **Claimants Must Be Actively Seeking Work.** Prompted by federal mandates, New York requires that claimants be actively seeking work (unless participating in a shared work program) to receive UI benefits and must maintain records demonstrating their efforts.
- **Longer Requalification Period.** Claimants who have been disqualified from receiving UI benefits due to a voluntary resignation, discharge for misconduct or discharge for refusal to accept a position must earn ten times their weekly benefit rate to requalify for benefits. Prior to 2014, claimants needed to earn five times their weekly benefit amount to break their ineligibility period.
- **Dismissal Pay Impacts Eligibility.** No UI benefits will be paid to anyone receiving “dismissal pay”, whether in installments or in a lump sum, if such “dismissal pay” exceeds the maximum weekly benefit amount. However, such pay commencing thirty days after the last day of employment does not impact UI benefits eligibility.
- **Weekly Maximum and Minimum Benefit Rates Increase.** Beginning October 2019, the weekly benefit amount will be linked to the state’s average weekly wage, increasing up to 50% of the average weekly wage by October 2026. *As of 2022, the maximum weekly benefit amount is \$504.*

What Employers Should Keep in Mind

Do Not Ignore Requests for UI Claim Information from NYSDOL

Employers must be mindful of the consequences for failing to properly respond to UI notices and requests from the NYSDOL. Often, busy employers fail to meet deadlines for responding to such requests; in other cases, employers intentionally withhold information about the circumstances of an employee’s departure because they do not want to interfere (or have agreed not to interfere) with a former employee’s benefits eligibility. Under New York State law, an employer who fails to respond to a NYSDOL notice or request for information in a timely or “adequate” manner will not be credited for UI benefits paid to the claimant if the claimant is later determined to have been ineligible for benefits. A first offense is excused as well as other instances where an employer can show good cause for the deficient response.

An “adequate” employer response, according to the NYSDOL, includes information sufficient to render a correct determination on eligibility (e.g., the reason for separation), was responded to in good faith, and is thorough and detailed. Employers should, therefore, avoid representing to an employee that it will respond to a UI claim in a way that is contrary to the obligation to provide a timely and adequate response. Moreover, employers remain subject to the same obligation as claimants to refrain from willfully making false statements to obtain benefits or to reduce the amount of contributions to the UI fund.

Severance Pay May Impact Eligibility for UI Benefits

Employers who offer severance pay to departing employees should keep in mind how doing so affects UI eligibility. Effective this year, the receipt of “dismissal pay” in excess of the UI maximum weekly benefit amount (*as of 2022, \$504*), renders the claimant ineligible for benefits during any weeks he or she receives the “dismissal pay.” The term “dismissal pay” means one or more payments made by an employer to an employee due to his or her separation from employment, whether because of a contractual obligation, statutory obligation or otherwise. Accordingly, severance paid in exchange for signing a waiver and release of claims would likely qualify as “dismissal pay”. To the extent the “dismissal pay” is paid in a lump sum, the “dismissal pay” will be allocated on a weekly basis from the day after the claimant’s last day of employment. Even though the claimant may not be working while receiving “dismissal pay”, this time will not be considered “total unemployment” for UI benefits purposes.

“Dismissal pay” commencing more than thirty days from the last day of employment, however, does not impact a claimant’s UI eligibility. Employers may wish to structure their separation agreements with departing employees so that payments do not begin until thirty-one days post-termination to maximize the amount of compensation the former employee will receive while searching for another job. In doing so, employers must ensure that the separation agreement or severance plan or policy accurately states the timing for payment. Otherwise, if an employer delays payment contrary to its agreement, plan or policy, the employer may unwittingly run afoul of Section 198 of New York’s Labor Law, which requires “wage supplements”, including “separation pay”, be paid *within* thirty days after the payment is required to be made.

NYS DOL Online Claims Processing

NYS DOL offers an online claims processing system, SIDES, in order to make it easier for employers to respond to UI claim notices and requests for information. Employers may enroll in SIDES by contacting the NYS DOL unemployment division.

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