Pennsylvania's Unemployment Compensation Programs...

# **UC** Issues Update



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# Gregg Shore Appointed Deputy Secretary of Unemployment Compensation Programs

The Department of Labor & Industry recently announced the appointment of Gregg Shore as deputy secretary for Unemployment Compensation Programs.

Most recently, Shore served as senior deputy attorney general in the Office of Pennsylvania Attorney General. His other experience includes serving as senior deputy district attorney in Lehigh County District Attorney's Office, special assistant United States Attorney in the United

States Attorney's Office for the Eastern District of Pennsylvania, an attorney with the law firm of Plakins Rieffel in Doylestown, Pennsylvania and deputy district attorney in the Bucks County District Attorney's office.

Shore earned a Bachelor of Arts in Communication from the University of Pittsburgh and a Juris Doctor from Widener University School of Law.

## **Unemployment Compensation Management System (UCMS)**

The Department of Labor & Industry is implementing the new UCMS. All claimants, employers and their representatives will be notified as UCMS components become available for their online use. You can find more information about UCMS at <a href="http://www.portal.state.pa.us/portal/server.pt/community/uc\_management\_system/18222">http://www.portal.state.pa.us/portal/server.pt/community/uc\_management\_system/18222</a>

### **UC Integrity Task Force**

The US Department of Labor (USDOL) has created a Federal/State Unemployment Compensation (UC) Integrity Task Force whose goal is to implement state-specific initiatives to aggressively target and reduce the improper payment rate on UC claims.

The task force partnered with 11 "high impact states" including Pennsylvania, to improve their overpayment rate. High impact states are generally large states that pay a significant amount of benefits thereby resulting in large overpayment amounts. Pennsylvania's generous UC weekly

benefit rate and eligibility requirements coupled with its payment of a large number of claims during the recent recession led to its designation as a high impact state. While Pennsylvania's 11.31 percent improper payment rate during state fiscal year (SFY) 2011 was consistent with the national rate (11.22 percent), the commonwealth is committed to working aggressively to decrease all improper payments.

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In order to achieve this goal, Pennsylvania has formed its own UC Integrity Task Force.

A key responsibility of the task force will be to address the root causes of improper payments and prevent their recurrence. To date, Pennsylvania has identified 40 short and long-term solutions. Short-term solutions are aimed at improving the UC claims processes and procedures and enhancing the department's communications and correspondence with employers and claimants. Long-term solutions include the implementation of a new computer system–UCMS–and possible legislative initiatives.

The primary cause (48 percent) of improper payments in Pennsylvania during SFY 2011 was incorrect reporting of claimant earnings. This can occur when a claimant incorrectly reports net earnings instead of gross earnings or when a claimant returns to work and fraudulently continues to file for UC benefits. Employers can assist the department in preventing fraudulent overpayments by promptly reporting any newly hired or rehired employees to the PA State New Hire Reporting Program. Timely reporting enables the department to identify fraudulently filed claims and take corrective action.

Another cause (32.4 percent) of improper payments in Pennsylvania was inaccurate separation information. This underscores the importance of receiving accurate, timely and complete information from employers and their representatives as to why the claimant was separated from employment. When an individual applies for UC, the department immediately sends a request for separation information to the employer. It is critical that the department mail the request to the proper employer address. Often, claimants will provide the department with the employer's local business address where the claimant had worked, but the employer's

personnel department or headquarters is located elsewhere. Valuable time is lost when the department's request for separation information must be forwarded from one employer address to another for reply. In response to this problem, the department created an Employer Information form (Form UC-1609P). An employer can use this form to provide the specific reason for the employee's separation and list the proper employer mailing address and contact person for UC purposes. The employer can then give this form to the employee at the time of separation. By completing the form, employers can ensure that claimants have accurate employer information when filing a UC claim. This form is available on the department's website at www.dli.state.pa.us. Simply click on "employers," then "unemployment compensation." There, a link to the Employer Information form can be found.

It should be noted that the department's new computer system, UCMS, will be launched in 2012 and will provide employers with a self-service portal allowing them to enter separation information and electronically send it to the UC system. UCMS will also offer enhanced UC crossmatch processing, expanded address verification and improved claimant identity validation. The department will be contacting employers shortly after the UCMS implementation date to share information and explain how to fully utilize the new system.

The department recognizes the critical role that employers play in safeguarding the UC Fund and ensuring that payments are only made to those who qualify for benefits under the law. To that end, the department reaffirms its commitment to working closely with employers to strengthen the integrity of the UC system, effectively match UC benefit recipients with employers who have hiring needs, and facilitate successful work searches for Pennsylvania's unemployed.



## **U.S. Department of Treasury - Treasury Offset Program**

On Nov. 17, 2011, the Department of Labor & Industry sent letters to certain claimants informing them that the department intends to submit notice of their UC fraud overpayment to the U.S. Department of Treasury under the Treasury Offset Program (TOP). TOP permits states to recover unpaid UC fraud overpayments from a claimant's Federal Income Tax refund, pursuant to the "SSI

Extension for Elderly and Disabled Refugees Act," Public Law, 110-328. The letters provide claimants with notice of TOP and provide a 60-day period in which to inform the department that their overpayments should be excluded from the program. Approximately 10,000 claimants have been identified for the initial implementation of the program.

## Fast Facts: Key Labor Market Information Made Simple

Fast Facts is a publication produced by the Center for Workforce Information & Analysis (CWIA) which contains important labor market information (LMI). Fast Facts provides traditional data on such issues as unemployment compensation, as well as statewide and industry-specific employment numbers. In addition, real-time data is provided, such as Help Wanted Online job postings data and New Hires job counts and trends.

Fast Facts provides data focusing on three different areas. "Pennsylvania Fast Facts" provides statewide data, "Workforce Investment

Area (WIA) Fast Facts" provides regional data specific to each WIA in Pennsylvania, and "Marcellus Shale Fast Facts" focuses on the WIAs in which heavy Marcellus Shale related activities are taking place.

Each version of the Fast Facts is published monthly on CWIA's website, <a href="www.paworkstats.pa.us">www.paworkstats.pa.us</a>, and is available in viewable or printable formats. Fast Facts consists of a clearly laid out collection of useful and pertinent LMI data, allowing the reader to quickly retrieve the data needed. Fast Facts: key labor market information made simple!

## **Revised Income Withholding for Support Form**

The federal Office of Child Support Enforcement (OCSE) revised the federally-approved Income Withholding for Support (IWO) form to facilitate the income withholding process. The format and appearance of the IWO forms issued by Pennsylvania courts has been changed to conform to the revised IWO form required by OCSE. All courts, as well as state and tribal child support

enforcement agencies, were required to start using the revised IWO beginning Oct. 1, 2011, but no later than May 31, 2012. For instructions regarding processing/returning the IWO or to view a copy of the federally-approved IWO, visit <a href="http://www.acf.hhs.gov/programs/cse/forms/">http://www.acf.hhs.gov/programs/cse/forms/</a> and click on the links beside OMB-0970-0154.

## **How Will Unemployment Claims Affect My Contribution Rate?**

If an employer qualifies for an experience-based contribution rate, the employer's rate is a reflection of the employer's unemployment compensation (UC) history from the date the employer became subject to the UC Law (Law). An experience rate takes into consideration wages paid by the employer and reported to the department, contributions paid to the UC Fund and benefits that

are charged to the employer's reserve account. Under the UC contribution rate formula, benefits charged to an employer's account put upward pressure on the employer's rate for subsequent calendar years.

#### **Unemployment Claims** continued from page 3

The extent that UC benefit charges may affect an employer's rate depends on the amount of the charges in relation to other values that have a favorable impact on a contribution rate. If the amount of the benefit charges is high in comparison to the size of the employer's payroll or the amount of contributions the employer has paid to the UC Fund, the benefit charges will have a greater impact on the employer's rate. One component of an experience rate is the "reserve ratio factor." This is the ratio of an employer's reserve account balance to his average payroll for the most recent three fiscal years. The higher the reserve ratio, the lower the employer's rate. An employer's reserve account balance is determined by subtracting the benefits charged to the employer from the amount of contributions paid by the employer, over the lifetime of the employer's UC account. Benefit charges decrease the employer's reserve account balance and

lower the reserve ratio, which can result in a higher contribution rate.

Another rate component is the "benefit ratio factor." This is the ratio of the employer's average benefit charges to his average payroll, both for the most recent three fiscal years. The higher the benefit ratio, the higher the employer's rate. Benefit charges directly increase the benefit ratio and thus can raise the employer's contribution rate. The benefit ratio factor looks only at benefit charges for the most recent three fiscal years. Therefore, benefit charges cease to affect the benefit ratio factor when they are no longer within this three fiscal year period. However, the reserve account balance is a lifetime figure. Benefit charges never leave the calculation of the employer's reserve account balance, but their impact can be diminished over time if the employer's future contributions exceed his future charges.

#### When Suitable Work Is Refused

Section 402(a) of the Pennsylvania UC Law (Law) provides, in part, that an employee shall be ineligible for compensation for any week in which his/her unemployment is due to failure, without good cause, to accept suitable work; provided that the employer who offers the work notifies the department of the offer within seven days.

When determining if a job that was declined was suitable, the department must refer to the definition of "suitable work" in Section 4(t) of the Law. Under Section 4(t), the department must consider the degree of risk involved to the claimant's health, safety, and morals, the claimant's physical fitness, prior training and experience, and the distance of the available work from the claimant's residence. The department must also consider the length of time the claimant has been unemployed, the reason for the claimant's unemployment, the prospect of obtaining local work in the claimant's customary occupation, prevailing wage rates in the claimant's usual trade or occupation, the claimant's previous earnings in relation to the wages offered, the prevailing condition of the labor market, and the permanency of the claimant's residence.

Section 4(t) also provides that an offered job shall not be considered suitable if: (1) it became vacant directly due to a strike, lockout, or other labor dispute; (2) the remuneration, hours or other conditions of the offered work were substantially less favorable to the employee than for similar work in the locality; or (3) as a condition of employment, the employee was required to join a company union, or to resign from, or refrain from joining, any bona fide labor organization.

If the offered job is considered suitable within the meaning of Section 4(t), the department must then determine if the claimant had good cause for refusing the job. A claimant who demonstrates good cause for refusing suitable work would not be disqualified from receiving UC benefits. In the absence of good cause, however, the claimant would be ineligible to continue to receive UC.

#### **Employer's Responsibilities**

UC Regulation §65.22(a)(3) states that an offer made to an employee shall include the rate of pay, the working hours, location of the work, a description

#### **Suitable Work** continued from page 4

of the duties and any other unusual requirements or conditions of the work. This offer can be communicated to the individual either verbally or in writing. When an employer who makes an offer has previously employed the employee after the beginning of the employee's base year, §65.22(b) allows that employer to simply inform the individual in the offer that the terms and conditions are the same as those under which they last worked.

Although the Law provides for a possible disqualification from receiving UC when suitable work is refused, the disqualification may be imposed only if the employer who made the offer notifies the department of the offer. The employer must inform the department of the offer in writing within seven days of making the offer. The employer's letter about the refused offer should be sent either by facsimile or by U.S. Postal Service. The letter should include the employee's name and Social Security number, the date that the offer was made, how the offer was made and the specifics of the work that was offered.

## What is the Difference Between an Employee and an Independent Contractor?

Employment is defined in Section 4(I)(1) of the Law as "...all personal service performed for remuneration by an individual under any contract of hire, express or implied, written or oral, including service in interstate commerce, and service as an officer of a corporation." The Pennsylvania Supreme Court has ruled that this definition is very broad and unless an exclusion in the Law applies, any services for which compensation is paid constitute covered "employment" for UC purposes.

In order to exempt an individual from coverage under the Law as an independent contractor, the individual's employer must show to the satisfaction of the Department of Labor & Industry that the following two conditions are met, pursuant to Section 4(I)(2)(B) of the Law:

- The individual has been and will continue to be free from control or direction over the performance of the services involved, both under his contract and in fact, <u>and</u>
- 2. As to such services, the individual is customarily engaged in an independently established trade, occupation, profession or business.

If an individual performs services in the construction industry, the individual's employer must satisfy additional requirements before the individual may be classified as an independent contractor. The employer must demonstrate that the individual:

- Possesses the essential tools, equipment and other assets necessary to perform the services independent of the employer;
- May realize a profit or suffer a loss as a result of performing the services;
- Performs the services through a business in which he has a proprietary interest;
- Maintains a business location separate from the employer's location;
- Either (1) previously performed the same or similar services for another person in accordance with the above requirements and while free from direction or control over performance of the services, both under his contract and in fact; or (2) holds himself out to the public as available and able, and in fact is available and able, to perform the same or similar services in accordance with the above requirements and while free from direction or control;
- Maintains liability insurance of at least \$50,000; and
- Has a written contract to perform the services.

In order for the department to determine whether a worker is an employee or an independent contractor, we must review the facts of each case on its own merits. The worker and the employer are asked to complete Form UC-110, Employment Status Questionnaire, and to provide us with copies of any written contracts and other documentation that support their position.

#### What is the Difference? continued from page 5

If you are an employer and have questions about the status of your workers, or if you are a worker and you believe you are being incorrectly classified as an independent contractor, please contact the Field Accounting Service (FAS) office closest to you. To find the address and phone number for the FAS office closest to you, visit <a href="www.dli.state.pa.us">www.dli.state.pa.us</a>, click on "Services Near You" and then, click on the county in which the employment will occur

and scroll down the list of regional services to "UC Employer Tax Services."

Additional PA UC tax information pertaining to this topic can be found at <a href="http://www.portal.state.pa.us/portal/server.pt?open=51/4&objID=552997&mode=2#4">http://www.portal.state.pa.us/portal/server.pt?open=51/4&objID=552997&mode=2#4</a>. Scroll down to the start of Section 4(I).

### Q&As

**Question**: We have been asked by one of the local colleges to hire a student through their co-op program. The student will work part time, about 20 hours per week, while attending school. Is compensation paid to them subject to UC tax?

**Answer**: Section 4(I)(4)(10)(C) of the Law excludes from coverage, "Service performed by an individual under the age of twentytwo who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a fulltime program, taken for credit at such institution which combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers." A written certification must be in effect between the school and the employer for these services to be excluded from coverage

<u>under the Law</u>. If these requirements are not met, the remuneration paid to a student would constitute covered wages for PA UC tax purposes.

**Question:** Are the services of an elected official excluded under the Law?

**Answer**: Yes. The Law excludes services performed by elected officials from "employment."

**Question**: Are the services of an appointed official excluded?

**Answer**: No. The Law does not contain an exclusion for appointed officials.

However, services performed by the following individuals are not covered under the Law:

- Individuals serving in positions which are designated as a major non-tenured policymaking or advisory position; and
- Individuals serving in positions which are designated as a policy-making position the performance of the duties of which ordinarily does not require more than eight hours per week.

*UC Issues Update* is published by the Pennsylvania Department of Labor & Industry on a quarterly basis. Questions, comments and feedback can be sent via email to <u>uc-news@state.pa.us</u> or to Gregg Shore, Deputy Secretary for UC Programs, 651 Boas St., Room 1700, Harrisburg, PA 17121-0750. General UC Tax information is available by calling 717-787-7679 or outside of the Harrisburg area, toll free 866-403-6163 from 8 a.m. to 4:30 p.m. If you have questions regarding UC benefit charges to your account, please call 717-787-4677 from 8 a.m. to 4:30 p.m. If you suspect fraud, contact 800-692-7469.

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