

New Jersey Amends Unemployment Compensation Law

August 17, 2023

Source: Saiber Employment & Labor Law Alert

In November 2022, Governor Phil Murphy signed an amendment to the New Jersey Unemployment Compensation Law intended to streamline the benefits process. The amendment, which took effect on July 31, 2023, expands the employer's reporting obligations and increases penalties for failure to abide by its terms.

Employers were previously required to provide separated employees with a Form BC-10 (which includes certain information regarding how to claim unemployment benefits) upon an employee's separation. Pursuant to the amendment, upon an employee's separation, regardless of the reason for same, the employer must also "immediately and simultaneously" send a copy of the Form BC-10 to the New Jersey Department of Labor and Workforce Development (NJDOLE) via electronic submission.

Additionally, employers are now required to submit a new form, yet to be issued, providing information required by the Division of Unemployment Insurance ("Division") to determine whether a departing employee is entitled to unemployment benefits. Employers must submit this form regardless of whether the departing employee applies for unemployment benefits. This new form is to be submitted to the Division along with the BC-10 Form. Moreover, employers are required to provide a completed copy of this form to the departing employee. Employers should continue to monitor the DOL website for information regarding this new form, as well as the electronic submission process. Employers must also now submit the email address of the employer's designated contact to the Division.

In addition to the updated reporting requirement, the amendment also modifies certain notification and appeal deadlines, as follows:

- The Division will now have seven calendar days from receipt of the new information form or the date the separated employee applies for benefits, whichever is earliest, to obtain any missing separation information.
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If the employer fails to provide the separation information within seven days after receiving the electronic notice or request for the information required by the Division, a deputy designated by the director of the Division will decide the claim based on any available evidence.

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The Division will now have three weeks from the date a claim is received to make the initial benefits determination.

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An employer may no longer retroactively contest a benefits determination if the employer is late in providing separation information. The employer can only contest the benefits determination for workweeks that occur after the separation information is received.

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Employers will now have only seven days from confirmed receipt of an initial benefits decision to appeal the initial determination of benefits.

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Employees will now have up to 21 days from the date the initial benefits decision was mailed to appeal an initial benefits determination.

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Significantly, the amended law also forbids untimely appeals of initial benefits determinations altogether as it states that “an appeal concerning an initial determination shall not be filed after whichever is applicable of the seven-day or 21-day period.”

As noted above, the amendment also increases the penalty for employers who fail to comply with the law. Previously, employers could only be subject to a \$25 fine for every ten days that the employer failed to provide benefits-related information to the DOL. Employers will now be issued a fine of \$500 or 25% of the amount of unemployment benefits withheld (whichever is greater) if they “willfully fail or refuse to furnish any reports or information,” including the separation information now required to be submitted by the employer. The same penalty will be imposed on any employer which knowingly makes a false statement or intentionally fails to disclose a material fact to avoid or reduce the payment of unemployment benefits.

Previously, an employee who received an overpayment would have to pay back the amount of the overpayment. The amendment now allocates liability between the employee and the employer. The separated employee is now only required to reimburse the Division if the employee caused the error resulting in the overpayment. If an employer’s error resulted in the overpayment, the employer’s unemployment account will be charged for the error. If the Division causes the error, the overpayment will be deducted from the individual’s unemployment benefits on the next occasion the employee is separated from a job. After four years, however, any overpayment is waived.

These changes greatly modify employers’ responsibilities and liability with regard to the unemployment process. Employers should review their procedures to ensure compliance with these new requirements.

If you have any questions about the above alert, please contact Jennifer O'Connor of Saiber LLC’s Employment & Labor Law practice group.