

UNEMPLOYMENT COMPENSATION *Frequently Asked Questions*

Unemployment Compensation: An Overview for Employers

Unemployment Compensation (“UC”) provides financial support to workers who have lost their jobs through no fault of their own by providing them with a source of temporary income. Individuals who are able and available for suitable work, and are actively seeking new employment, may collect Unemployment Compensation Benefits (“UC Benefits”) for a limited period of time. To qualify for UC Benefits, a worker must have performed services covered under the Pennsylvania Unemployment Compensation Law (“UC Law”) and must have worked for an employer who has paid into the Unemployment Compensation Fund (“UC Fund”).

UC is a problematic area for many employers given the complexities of the UC Law and the various mathematical formulas involved. Nevertheless, it is still important for you to be aware of your responsibilities as an employer. What follows is a list of frequently asked questions and is meant to serve as a guide through the basics of Pennsylvania UC Law. If you have specific questions about how UC affects your business, our experienced attorneys have handled a variety of UC issues and can provide you with the answers.

***Q* What is Unemployment Compensation?**

A UC is a program designed to protect workers against job loss by providing a source of income to individuals who become unemployed through no fault of their own. UC Benefits are paid, for a limited time, to those who are able and available for suitable work, but continue to be unemployed while looking for another job.

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Q How is Unemployment Compensation regulated?

A The Pennsylvania Department of Labor & Industry is responsible for administering the UC program. The Bureau of Unemployment Compensation Benefits & Allowances (BUCBA) administers the benefits portion of the program through a statewide system of Service Centers that take and process claims. The Office of Unemployment Compensation Tax Services (UCTS) administers the tax portion of the program and maintains a statewide network of field offices called Field Accounting Service (FAS) to assist employers. More information on UC regulations can be found at the Department of Labor's website at <http://www.dli.state.pa.us/>.

Q How is Unemployment Compensation funded?

A Employer contributions in the form of quarterly tax payments are the primary funding source for UC Benefits, with an employee withholding tax serving as a secondary source. The costs associated with administering UC are defrayed by federal employer taxes collected under the Federal Unemployment Tax Act (FUTA).

Q Am I considered an “employer” under Unemployment Compensation law?

A An “employer” is anyone that provides full time and/or part-time employment to one or more workers. New employers should register with the Office of Unemployment Compensation Tax Services within the Department of Labor and Industry by filing a PA Enterprise Registration Form (PA-100). This form is downloadable at <http://www.paopenforbusiness.state.pa.us>. The information submitted on this form will provide the basis for determining whether an employer falls under UC Law. Once registered, an employer receives a UC account number, which facilitates the recording of contribution payments and benefit charges.

The determination of whether you qualify as an “employer” can sometimes be complicated. If you have any questions regarding your status as an employer, please call our office and we can arrange for you to discuss your questions with one of our attorneys.

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Q What are my responsibilities as an employer?

A Employers who pay wages for employment covered under the UC Law are required to:

- Register with the Department of Labor and Industry
- Maintain certain employment records
- File quarterly reports of wages paid and contributions due
- Pay the employer contributions due on quarterly reports
- Withhold and remit employee contributions due on quarterly reports for quarters during which employee contributions are in effect

Q How do I report my wages and contributions?

A Employers report their quarterly wages and contributions due on the Employer's Report for Unemployment Compensation Quarterly Tax Forms, UC-2, 2A, and 2B. These forms are mailed by the Department of Labor to employers near the end of each calendar quarter, but are also available online at the Department of Labor's website.

Q When should I file reports?

A Employers covered by the UC Law are required to file reports and remit contributions on a quarterly basis. The reports and contributions are due at the end of the month following the calendar quarter (April 30, July 31, October 31, and January 31). Employers are required to report wages for the quarter in which the wages were paid. The Office of Unemployment Compensation Tax Services will mail quarterly reporting forms near the end of each calendar quarter, but the employer is responsible for completing and filing reports and remitting payments, even if the forms are not received.

A penalty is assessed against any employer who fails to submit a quarterly tax report when it is due. The penalty is 10% of the total contributions payable for the quarter, with a minimum of \$25 and a maximum of \$250.

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Q How much are my contributions?

A Pennsylvania UC law requires covered employers to make contributions into a pooled reserve known as the UC Fund. The amount of employer contributions due is based on a specified percentage of taxable wages. Employers pay contributions on the first \$8,000 in wages paid to each employee in a calendar year. Wages include salary, commissions, bonuses, tips, sick or accident disability payments, and certain fringe benefits.

Q What is my contribution rate?

A Newly liable employers are assigned a new employer rate that is multiplied by \$8,000 taxable wages paid to each employee for the calendar year. The rate that new employers are assigned is effective for approximately two years. After two years, the employer may have sufficient experience to be entitled to a calculated rate.

An experience rate is based on an assessment of each employer's unemployment risk and gives the Office of Unemployment Compensation Tax Services some flexibility when determining the contribution rate. Employers with high rates of unemployment can expect higher contribution rates, while employers showing a stable employment rate can expect to receive reduced rates. Each year, all factors are examined and analyzed to determine each individual employer's contribution rate. Thereafter, a Contribution Rate Notice is mailed to each employer by December 31st of each calendar year and shows the effective rate for the coming calendar year.

Q Can I appeal my rate?

A An employer who disagrees with the information on the contribution rate notice can file a written appeal within 90 days of the mailing date of the notice. Specific instructions for filing a contribution rate appeal are included on the rate notice. The letter of appeal should be sent to the Department of Labor and Industry, Office of Unemployment Compensation Tax Services. During the appeal process, you may file your own appeal and represent yourself, or you may have an attorney represent you.

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In what circumstances is an employee ineligible to collect Unemployment Compensation benefits?

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It is the responsibility of the employee to be eligible and remain eligible for UC Benefits and under certain circumstances, and or the employee may be disqualified.

An employee may be ineligible to collect UC Benefits if he or she:

- Voluntarily quit work without a necessitous and compelling cause.
- Failed to submit to and/or pass a drug or alcohol test
- Lost their job due to willful misconduct
- Became unemployed due to own fault
- Went on strike
- Is unable to work or unavailable for work
- Failed to apply for or accept suitable work
- Failed to participate in re-employment services
- Withheld facts or submitted false information
- Is self-employed
- Limits the number of hours per week they are available to work
- Failed to be available as instructed
- Committed fraud
- Is incarcerated

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What is the process for appealing a determination of Unemployment Compensation Benefits?

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Both the claimant and the employer have a right to appeal a determination of eligibility issued by the Department of Labor and Industry. Once an appeal is initiated, a UC referee will conduct an impartial hearing to decide the validity of the determination. If the employer disagrees with the referee's decision it can file a further appeal with the Unemployment Compensation Board of Review. If the employer disagrees with the Board of Review's decision, the employer can appeal to the Commonwealth Court. Each stage in the appeal process is time sensitive, and it is important to keep track of the various deadlines.

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Q **What happens if I do not contest an employee's claim for Unemployment Compensation Benefits?**

A If an employer does not respond within the prescribed period of time to challenge a claimant's eligibility for UC Benefits, its ability to contest the claim is effectively waived. The Unemployment Compensation Service Center will make a determination based upon the information provided by the claimant and will accept his or her information as true.

Q **Will my tax rate increase if an employee files for Unemployment Compensation Benefits?**

A This question is common among employers who are worried that their tax rates will drastically increase if an employee files for unemployment. The answer, however, is a complicated one and is based on a variety of factors, including, among other things, the amount of lifetime contributions the employer has made, the lifetime benefits charged against the employer's account, the employer's average taxable payroll for the previous 12 months, and the amount of UC benefit charges in the last three 12-month periods.

Q **What are some of the reasons that have been accepted when an employer contests an employee's claim for Unemployment Compensation Benefits?**

A Generally, the employer contests a claim for UC Benefits by using one of the defenses outlined above in 14. The main thrust of the UC Law is making a factual determination of the circumstances that led to the separation of employment. Even if both the employer and employee agree to a particular set of facts, the UC referee will make his or her own determination based on the evidence presented.

Q **What impact do Unemployment Compensation determinations have on future lawsuits?**

A Each UC case is examined on its own facts and a determination is made based upon those facts alone. Factual findings made during a particular UC determination do not have a preclusive effect in future civil proceedings.

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Can a business defend against a claim for Unemployment Compensation benefits without hiring legal counsel?

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The Commonwealth Court formerly prohibited an employer from being represented by a party that was not an attorney because such action was considered to be the unauthorized practice of law. However, this rule has recently been overruled by the Pennsylvania Supreme Court, which determined that a non-lawyer representative of an employer in UC proceedings is not engaging in the practice of law, and that the UC Law permits such representation.

***If you have any questions about these FAQs, please contact
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or email us at kmiller@leechtishman.com.***