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Three Strikes and You're Out! Georgia's New Law on Employer Responses to Unemployment Insurance Claim Notices

December 17, 2013

By Sarah Phaff and Jeff Thompson
Macon Office

Georgia employers may have received a surprise in their mail: a letter from the Georgia Department of Labor stating that, effective October 22, 2013, Georgia employers had to comply with a new rule concerning state unemployment insurance claim notices.

The New Rule

The **rule** states that an employer or employer's agent who does not "timely and adequately" respond to "three (3) or more individual claims" within the "current calendar year" will have its account charged and "may not be relieved of charges, regardless of whether the associated determination to pay benefits is later reversed on appeal or if an overpayment is established." The rule makes an exception for an employer who did not "timely and adequately" respond for "substantial good cause." The rule defines "substantial good cause" as "extenuating circumstances which prevented the timely or adequate filing by the employer, or the employer's agent, as appropriate, and . . . such extenuating circumstances were beyond the employer's or the employer's agent's control."

The "substantial good cause" standard seems to be difficult for employers to meet, so employers should plan to respond in a timely fashion to all state unemployment insurance notices.

The practical effect of this rule is that Georgia employers will have their account with Georgia Department of Labor charged if they don't respond timely *or* adequately (meaning completely) to every UI claim notice, which could also affect the employer's rating.

Why Did Georgia Make This Change?

Georgia's new law was adopted to comply with a federal law enacted in 2011.

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On October 21, 2011, President Obama signed into law the **Trade Adjustment Assistance Extension Act of 2011**. The main focus of the TAA is to provide retraining and other enhanced benefits to workers who lose their jobs as a result of increased imports. A portion of the Extension Act, called the Unemployment Insurance Integrity Act, requires states to implement measures designed to ensure prompt and complete employer responses to claims for unemployment. *The required measures apply to all claims for unemployment, not just claims that might be eligible for TAA benefits.*

States that do not comply risk losing federal subsidies for unemployment benefits, and employers would risk losing the ability to receive state unemployment insurance credit against their Federal Unemployment Tax Act ("FUTA") taxes.

The TAAEA requires that, by October 21, 2013, states issue laws that provide that "an employer's account shall not be relieved of charges relating to a payment from the State unemployment fund if the State agency determines that": (1) the employer was "at fault for failing to respond timely or adequately" to a claim or request for information on a claim for compensation, and (2) the employer established a "pattern" of failing to respond to such requests. The TAAEA applies to "agents" as well as "employers," but does not define "agent."

In Georgia, an employer who does not comply with the UI integrity rule will be subject to the sanctions set forth in the rule.

Each state has taken its own approach on implementing laws that conform with this statute. If you should have any questions about how this law will affect your business in Georgia, please contact **Jeff Thompson** or **Sarah Phaff** in Constangy's **Macon office**, or any attorney in Constangy's **Atlanta office**.

What's on the Horizon?

The Georgia Department of Labor implemented this rule because the state legislature did not pass the appropriate legislation within the required time frame. Accordingly, there will probably be new legislation in 2014. We will keep you posted!

About Constangy, Brooks & Smith, LLP

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