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Will 2014 Unemployment-Insurance Reforms Save Employers Money?

The New York State Department of Labor (NYSDOL) recently acknowledged that the Unemployment Insurance Trust Fund is insolvent with a \$3.5 billion deficit.

As a result, the state recently implemented changes to the unemployment-insurance law that are purportedly designed to both increase revenue for the trust fund and save employers money. Although it is questionable whether the changes will accomplish the latter goal, the NYSDOL claims that employers in the Central New York region will save \$16 million over the next 10 years and the entire trust-fund deficit will be paid off by 2016.

The new rules are well intentioned, but many employers are likely to see their unemployment-insurance costs increase. For example, it is not uncommon for an employer to be charged for unemployment-insurance benefits initially, but subsequently receive a credit for those charges after the NYSDOL determines the former employee is ineligible or there was otherwise an overpayment. But as of Oct. 1, 2013, employers must submit an adequate response to a notice of potential charges within 10 calendar days or be penalized. If employers fail to timely respond or provide inadequate information, with limited exceptions, employers will no longer receive a credit for overpayments.

Employers' unemployment contributions relative to employee earnings will also increase in 2014 and every year going forward. Previously, employers only paid unemployment-insurance contributions on the first \$8,500 of an employee's wages. Starting Jan. 1, 2014, employers pay against the first \$10,300 of wages. This amount in-

creases each year to a maximum of \$13,000 in 2026. After 2026, the wage-base subject to employer contributions will be adjusted to equal 16 percent of the state's average annual wage.

Further, as of Oct. 6, 2014, the minimum weekly unemployment-benefit rate increases from \$64 to \$100, and the maximum benefit rate increases from \$405 to \$420 per week. Thereafter, the maximum rate will increase each year until it reaches 50 percent of the state's average weekly wage. This will of course increase employer's required contributions to the trust fund.

But it is not all bad news for employers. Despite rising costs, the state also implemented changes that could help reduce liability for some employers. Specifically, claimants who exhaust their benefits or are otherwise disqualified must now earn 10 times their benefit rate to re-qualify for benefits. Previously claimants only had to earn five times their benefit rate to re-qualify.

Another change designed to save employers money relates to severance pay. Previously, former employees could generally collect unemployment-insurance benefits and severance pay simultaneously, if the severance pay was less than the employee's prior compensation and was not contingent upon the employee remaining unemployed. However, claimants who receive severance pay are now only eligible for unemployment benefits if their severance pay is less than the maximum weekly rate of \$420 per week, the initial payment is made more than 30 days after the last day of employment, or the severance pay has stopped when they apply for benefits. Thus, employers must carefully consider the terms of severance agreements and the impact they will have on unemployment-insurance benefits.

Ultimately, employers should anticipate that unemployment-insurance costs will increase in 2014. But there are numerous steps they can take to combat this ever-increasing expense. First, employers must provide a thorough and timely response to a notice of

potential charges. It is helpful for employers to register with the State Information Data Exchange System (SIDES).

SIDES allows employers to correspond electronically with the NYSDOL, reducing the chance that employers fail to meet the required deadline.

Aside from compliance with the new rules, many employers' unemployment-insurance contribution rates increase because employees who are fired for misconduct are allowed to collect benefits. This is because the standard for what constitutes disqualifying misconduct under the unemployment-insurance law is rather high and differs from its traditional definition. Consequently, although an employee engages in misconduct that results in his lawful termination, it may not rise to the level required to disqualify him from unemployment benefits.

This is a frustrating reality for employers who feel almost anyone can collect unemployment benefits no matter how serious the misconduct. Without question, unemployment insurance is a significant cost to many employers. However, with the right guidance, those costs can often be reduced by ensuring employee disciplinary issues are handled properly. This entails having proper written policies and employee warnings in place and imposing discipline in a consistent manner. The wording of a policy or written warning can determine whether a fired employee receives unemployment benefits. An experienced employment attorney can offer businesses the proper advice to avoid needlessly paying benefits to those who should be disqualified for misconduct. Such proactive management often saves employers substantial money in the long term. □

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