UNEMPLOYMENT INSURANCE RECENT CONFORMITY AND COMPLIANCE ISSUES

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UI Conformity and Compliance Issues

- Improper Payments
- Identity Verification Issues
- Mandatory Use of Treasury Offset Program (TOP) for UI Debts
- Mandatory Penalty for Fraudulent Overpayments
- Gig Economy and Worker Classification
- Other Common/Recent State Legislation Issues
Improper Payments

• Improper Payments Elimination and Recovery Improvement Act of 2010 and Improper Payments Elimination and Recovery Audit Improvement Act of 2012

• Acceptable Level of Performance – Less than 10 percent improper payments

• “Everyone owns Improper Payments” and efforts to address

• Cross-Agency Integrity Teams
Identity Verification Issues

- States encouraged to have ID verification
- USDOL working with Integrity Center on resource for all States
- Balancing Improper Payment Prevention and Payment When Due Requirements
- Must allow valid forms of IDs issued by any state or Canada as proof
- Must ensure Due Process Protections
  - Notice of Issue(s) – what must be done to cure the issue
  - Opportunity for Hearing – can’t just deny or not process claim
  - Appealable Decision
- Some States have developed a new Determination Process
  - A Denial Determination based on Identity
  - Prior to Monetary Determination
- Guidance coming soon!
Mandatory Use of TOP for UI Debts

• Bipartisan Budget Act of 2013: *Requires* states to use Treasury Offset Program to collect certain UI related debts

• Overpayments due to fraud or failure to report earnings *and* delinquent UI taxes (and penalty and interest on such debts)

• To date, 50 states and DC using TOP for benefit overpayment collection and *only 26* states using TOP for UI tax debt collection (and we are working to onboard 14 more states)

• Very effective: $2.7 billion for benefits overpayments and $35 million for delinquent UI taxes have been recovered since enrollment. $258.9 million (benefits) and $8.3 million (tax) offset recovered in CY 2019.

• **New updated guidance issued in UIPL No. 02-19 (December 12, 2018)**

• See 42 U.S.C. Section 503(m); 26 U.S.C. Section 3301 *et seq.*; 26 U.S.C. Section 6402; and 31 CFR Section 285.8
Mandatory Penalty for Fraudulent Overpayments


- States must impose a penalty on fraudulent overpayments of at least 15%.

- See UIPL No. 02-12 and its changes.

- Many states have laws on books conforming with requirement – but some are not complying with it. States need to enforce this requirement.
Gig Economy and Worker Classification

• State legislatures continue to propose bills on this topic as labor markets change
• Transportation and other marketplace platforms
• Required Coverage (Section 3309, FUTA, 26 U.S.C. Section 3309)
  • States may not, consistent with the requirements of Federal law, use an independent contractor test that is less rigorous than the Internal Revenue Service (IRS) test when determining coverage of services performed for state or local governmental entities, nonprofit organizations, and Indian tribes.
• Potential Tax Implications for non-section 3309 entities
  • Not a USDOL conformity/compliance issue, but if the IRS were to determine that these services were employment, the employers would be required to pay the full FUTA tax (currently 6.0%) on these wages as no state contributions would have been made on the remuneration paid to the individuals providing these services, a requirement for an employer to be eligible for FUTA credit.
Other Common/Recent State Legislation Issues

• Frequent bills on conditions unrelated to “fact or cause” of unemployment.

• Conditions of eligibility for receiving UI benefits must be linked to the “fact or cause” of unemployment.

• Secretary’s Decision in 1964 S. Dakota conformity case

• Each year, legislatures propose bills linking unrelated conditions:
  • Require performance community service while collection UI – not related to fact or cause of unemployment;
  • Additional benefits (or lower benefit amounts) for specific industry/group of workers is not allowed (can offer state payments of add’l benefits after exhaust regular benefits);
  • Making claimants pay to access UI (e.g. pay for drug test; fee to file an appeal; pay costs of copy of their file);
  • Duration of Benefits based on county of residence – nope.
Other Common/Recent State Legislation Issues

• Recent State Legislative Issues

• Withdrawal Standard – allowing use of funds for purposes other than payment of benefits (i.e. fraud tipster keep a % of recovered funds)

• Confidentiality of UC information (20 CFR Part 603) – Who may access UC information, are they a “public official” as defined in the regulation, are the proper agreements including cost in place

• Caps on total public assistance – can’t include UI.

• Define “employment” linked to age – nope (except for under 21 and working for parent or under 18 and delivering newspapers).
Questions
TIME FOR A BREAK