

Managing Unemployment Compensation Costs

In this article we talk about some new concepts you can use to reduce unemployment compensation costs. We include an overview of unemployment compensation and traditional cost control strategies. HR practitioners will find it a good review, as well as learn about a new and easy-to-implement cost containment strategy. – Jeff Rogers, President, Eptiva, LLC

Background

The Social Security Act of 1935 created the Federal-State Unemployment Compensation (UC) Program (often called Unemployment Insurance program/UI). The U.S. Department of Labor and designated state agencies share responsibilities for administering the UC program. Each state designs its own UC program within the framework of the federal requirements.

The Department of Labor administers the national program, the UC fund, and provides oversight and guidance to the states. The state agencies apply federal law and regulations and administer the state's UC program in accordance with conforming laws and regulations. Within the context of the federal law, states have developed diverse and complex methods for determining UC eligibility.

Unemployment Compensation Program Funding

To realize potential cost savings, it is important to understand how UC programs are funded. The Unemployment Trust Fund has 59 accounts. The accounts consist of 53 state UC benefit accounts, the Railroad Unemployment Insurance Account, the Railroad Administration Account, and four Federal accounts.

Generally, the Unemployment Insurance (UI) program is financed by employers who pay federal and state unemployment taxes on wages paid to employees. However, under the Federal Unemployment Tax Act (FUTA), nonprofit organizations, Indian tribes, and state-local government organizations may elect instead to reimburse the system for benefits paid using the reimbursement (self-insured) method. A few states (Alaska, New Jersey, and Pennsylvania) also collect contributions from employees.

The tax rate varies for each employer depending primarily on the relative amount of UC benefits paid to former employees. This is called the employer's "experience rating." The UC tax works like any other insurance premium. An employer will generally pay a lower tax rate when former employees make fewer claims on the employer's account.

All state laws provide for a system of "experience rating" under which individual employers' contribution rates vary from the standard rate on the basis of their UC claims experience. The experience rating formulas are devised to establish the relative experience of individual employers so that fair and equitable tax contributions can be made into the UC trust fund.

For the latest year available (2003), the preliminary estimated U.S. average state tax rate is 0.6 percent of total wages, and is as high as 1.5% (in Alaska). Individual employer rates vary substantially as well.

Benefit Determination

There are three key factors used by states in determining UC benefits: (1) the amount of recent employment and earnings; (2) the claimant's ability and willingness to seek and accept suitable

employment; and (3) certain disqualifications related to a claimant's most recent job separation or job offer refusal.

In order to qualify for benefits, an unemployed person must have worked recently for a covered employer for a specified period of time and earned a certain amount of wages. The following definitions are important to understanding the UC benefit determination.

Base Period: The base period (base year) is a one-year period that most states (48) define as the first four of the last five completed calendar quarters before the unemployed person claims UC benefits. The base year is divided into quarters and used to establish a UC claim and calculate an award.

Base Period Employers: A base period employer is any employer who paid the claimant wages during the 12-month period (base period) his or her claim is based upon. It is important to note that an individual's UC claim may be based on earnings from one employer, or several employers.

The quarter with the highest earnings in the base period determines how much the claimant will receive each week (weekly benefit amount). The regular State programs usually provide up to 26 weeks. The permanent Federal-State Extended Benefits Program provides up to 13 additional weeks in states where unemployment rates are relatively high.

The amount of benefits a claimant receives weekly (weekly benefit amount) and the total amount available in the claim (maximum benefit amount) are based on the earnings during the base period of the claim.

Claimant Eligibility

The state must apply laws and regulations to promptly pay or deny benefits to unemployed workers. The state's UC agency accomplishes this through interaction with the employer community and individuals filing UC claims.

A claimant's initial eligibility for benefits is based on the reason his or her employment ended with their last employer. A ruling is issued by the state UC department and is based on the reason the claimant's job ended. It advises whether or not the employer's reserve account will be charged as a result of benefits paid to the claimant.

State UC department staff contact employers as well as claimants to resolve eligibility issues. Usually, they contact an employer and the former employee to obtain information about the reasons the individual quit, was fired, or otherwise had their employment relationship severed.

If it is the last employer's position that the individual is not entitled to benefits and their reserve account should not be charged for those benefits, they may protest a claimant's eligibility for benefits using the state UC agency's established procedures.

Benefits are normally paid after a claim has been filed and all eligibility requirements have been met. To be entitled to benefits an individual must be:

- Out of work due to no fault of their own
- Physically able to work
- Actively seeking work
- Ready to accept work

The primary causes for disqualification from benefits are:

- Not being able to work or available for work

- Voluntary separation from work without good cause (see below)
- Discharge for misconduct connected with their work (see below)
- Refusal of suitable work without good cause
- Unemployment resulting from a labor dispute

Disqualification for one of these reasons may result in a postponement of benefits for some prescribed period, a cancellation of benefit rights, or a reduction of benefits otherwise payable.

To protest a claim, employers must respond with written information about the former employee's separation from work, or other facts that may affect an individual's eligibility for benefits.

Good Cause Separation

You may receive a notice of wages used for a UC claim even if the person left you to take another job. This often hinges upon the definition of "good cause." Essentially, *good cause* is defined as "circumstances that would cause a reasonable person who wishes to remain employed to leave work or refuse a job offer."

The following reasons are examples of what would generally be considered *good cause* for quitting:

- To accept permanent employment (which did not occur as expected) at a substantially higher wage (more than ten percent is usually considered "substantially higher").
- Leaving temporary or part-time work for full-time employment (which did not occur as expected).
- The work constitutes a risk to health or safety.
- Sexual harassment.
- To escape domestic violence.

The following reasons are examples of what is generally considered not to be good cause for quitting:

- Looking for other work.
- Attending school.
- Becoming self-employed.

Generally, employers are not charged for benefits when the former employee quit for a non-compelling reason, however, it is up to the employer to assert that position. Employers must be proactive at every step if they want optimal reduction of UC costs.

Employers are given a reasonable time to respond to notices of their base period wages being applied to a UC claim so they can appeal the award of benefits charged to their account. A timely, written response serves to contest a former employee's eligibility for benefits and entitles the employer to a written notice advising whether the claimant is eligible for benefits.

Managing UC Costs

Many employers do not realize how much control they have over the unemployment compensation costs their organizations pay annually. They think that since they pay for UC through taxes, that it is essentially a fixed cost of doing business. Likewise, some non-profit reimbursement employers think they have little control over UC costs.

The reality is that proactive employers, and in particular, their HR departments, can have a significant and very positive impact on their organization's unemployment costs. This is because over the long haul, an organization's UC tax rates are based upon actual claims experience.

The concept is simple ... the lower the number of claims, the lower the tax rate. The impact of effective claims management is just as significant, but far more immediate for state/local government, nonprofit, and other reimbursement-based employers.

So, how does one go about reducing UC costs? There are lots of "traditional" ways one can do it and they all have merit; especially if done proactively and aggressively. Several of those "traditional" ideas are referenced below, albeit at a 30,000 foot level. Much more could be written about each of these, but not in an article of this size.

Web-based technology now enables an additional approach that every HR manager should add to their UC cost management arsenal.

A Technology-Based, Self-Service, Low-Cost, Easy-to-Implement Solution

I think everyone will agree that managing UC costs requires that employers take a proactive role. HR managers reading this are probably saying "Duh ... no kidding!" But they're probably also thinking how can I do any more than I'm already doing with the limited resources I have at my disposal? As a 20+year HR executive myself, I know where they are coming from. So here's a quick view of the solution.

When I was working in healthcare and struggling with escalating medical insurance costs, we often commented that the ultimate form of cost containment would be to keep people from getting sick in the first place. The UC corollary would be that the ultimate form of cost containment would be to keep people employed. OK, there's no way to assure people don't get sick and there's no way to assure people stay employed.

But just as wellness programs, exercise, and diet can help people stay well, job search, resume, and interviewing skills can help people get and stay employed. So, how do you reduce UC costs without adding to your workload or spending lots of money on infrastructure? It's easier than you may think, so read on.

Four Short Paragraphs that Can Save You Thousands

Paragraph I: Former employees that have the requisite job search skills are far more likely to get and stay employed. Not only will they have shorter terms of unemployment, but also those who are employed are far less likely to file other employment-related claims.

Paragraph II: Web-based technology makes it easy to get comprehensive job search tools and skills into the hands of former employees, even if they haven't worked for you for many months! All it takes is password access to highly targeted job search and interviewing content.

Paragraph III: Accomplishing the above using an employee self-service system that won't add to HR's workload would make such a solution very attractive.

Paragraph IV: Accomplishing the above for a few hundred dollars/month total cost to the average employer would make such a solution even more attractive.

If the above paragraphs have some appeal for you, visit our website at www.jobhunterpro.com to learn more about Online Outplacement and Job Separation Support. Meanwhile, don't neglect traditional approaches to UC cost containment, as follows.

Traditional Approaches to UC Cost Containment

To help control UC costs it is suggested that all employers follow these business practices:

1. Keep detailed and secure employment records.
2. Provide employees with copies of company policies.
3. Document policy infractions with written warnings, when necessary.
4. Approve reasonable requests for leaves of absence, when possible.
5. Document leaves of absence granted and any extensions of the leave.
6. Document leaves denied and the business reasons for the denial.
7. Keep turnover to a minimum by using fair and competitive business practices.
8. Conduct and document exit interviews for all employees.
9. Promptly answer UC claim notices accurately and in detail.
10. Provide copies of the appropriate employment records to the state UC office.
11. Answer the UC department interviewer's questions with detailed responses.
12. Send additional eligibility information, acquired at a later date, to the UC department.
13. Appeal the UC department's decisions if you believe they are contrary to fact or law.
14. Bring qualified witnesses with first-hand knowledge to any appeal hearings.

Eligibility Issues

It isn't always easy to determine eligibility for unemployment insurance. There are many gray areas that are subject to interpretation and also hinge upon which party can provide the most compelling argument.

The following provides some additional detail on eligibility that will help you understand the issues employers and their HR departments must deal with. Since each state interprets benefit eligibility based upon their own criteria, these examples should be viewed as general guidelines only.

REASON FOR LEAVING A JOB

Laid Off for Lack of Work

An individual who is laid off is out of work through no fault of his or her own and is generally eligible for UC benefits. Normally, it is not necessary for the employer to respond to the UC department's notice of claim filed under this circumstance, unless there is other eligibility information to report (job refusal, separation payments, etc.).

Voluntary Quit

Voluntarily quitting a job does not disqualify the claimant from receiving benefits if the quit was for "good cause." The reason for quitting does not have to be work-related or even involve the employer. Quitting for personal reasons may be with good cause if they are of a compelling nature. Quitting work without good cause will result in a denial of benefits.

Discharge

Discharging an employee does not disqualify the claimant from receiving benefits if the discharge was not for "misconduct." Misconduct connected with his or her most recent work exists for an individual's discharge if all of the following elements are present:

1. The claimant owes a material duty to the employer under the contract of employment.
2. There is a substantial breach of that duty.
3. The breach is willful or wanton disregard of that duty.
4. The breach disregards the employer's interests and injures or tends to injure the employer's interests."

It is the employer's responsibility to prove the claimant was discharged for "misconduct." The misconduct must be connected with work.

The following reasons are generally considered to be *misconduct*:

- Theft of company property or property of other employees.
- Willfully or negligently damaging company equipment.
- Falsifying expense vouchers.
- Drinking alcohol on the job.
- Engaging in altercations with supervisors or other employees.

The following reasons are *not* generally considered to be *misconduct*:

- Inefficiency.
- Failure to meet performance standards as the result of inability or capacity.
- Inadvertence or ordinary negligence in isolated instances.
- Good faith errors in judgment or discretion.

Alcohol and Drug Addiction

A claimant is generally disqualified from receiving UC benefits if he or she left their most recent employment for reasons caused by an irresistible compulsion to use or consume intoxicants, including alcoholic beverages."

However, mitigating circumstances may reinstate UC benefit eligibility. For example, if the claimant is denied benefits, subsequent work and earnings can purge the disqualification. The disqualification may also be lifted by verification that the claimant has, subsequent to the week in which the separation occurred, entered into a treatment program. The claimant must be continuing in, or have completed the program and must be able to work.

Conclusion

So there you have it ... a quick look at unemployment compensation and a fresh look at how you can reduce your UC costs. Want to learn more ... have other ideas, please drop me a line at jkrogers@eptiva.com.

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