

UI Integrity: State-by-State Overview

Post-TAAEA Enactment Update

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UI Integrity Legislation

Unemployment insurance (or UI) Integrity broadly refers to efforts to support the effective management of UI systems, with implications for state workforce agencies, employers, third party agents, and claimants.

With over \$41 billion paid in unemployment benefits in 2012, and a rate of improper charging at nearly 11%, unemployment insurance was a plum target for federal budgetary reform efforts.¹

The recent push for UI Integrity comes from the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), federal legislation that includes a mandate for states to **prohibit relieving employers' unemployment accounts of benefit charges** when: a) the benefits were improperly paid due *even in part* to employer (or employer's agent's) failure to respond timely or adequately to the state's request for information; *AND* b) the employer or the employer's agent has established a pattern of failure to respond timely or adequately to such requests.

A handful of states already had legislation in place that met the higher standard under TAAEA; most had to enact new legislation before October 21, 2013 in order to comply.

Key Points for Employers:

- The bar is now raised for employer response to agency request for claim detail.
- Where response was previously (in practice) a choice based on perceived benefit to the employer (i.e. only worthwhile to pursue in cases where unemployment benefits were not merited), employers must now respond to all claims in order to remain compliant and avoid negative financial repercussions.
- Where responses to request for claims detail could previously be put off and perfected after the initial determination, sufficient response is now required for all initial agency requests.

¹ Department of Labor Data for 2012.

Unemployment Insurance (UI) Integrity Laws by State

State	Pattern of Failure / Key Points	Additional Penalty	Good Cause Provision	Bill
AK	Greater of 2 instances or 2% of claims in prior year	N	N	HB76
AL	2 or more instances	N	N	SB201
AR	Not defined	N	N	SB575
AZ	Greater of 5 instances or 5% of claims in prior year	N	N	HB2173
CA	2 or more instances relating to the individual claim	N*	N	AB1845
CO	To be defined by "The Division."	N	N	HB1124
CT	Undefined	N	Y	SB909
DC	Undefined	N	Y	B20-199
DE	Undefined	N	Y	HB91
FL	Undefined	N	N	HB7007
GA	Instances involving 3 individual claims in the prior 12 calendar months	N	Y	Rules of GA DOL Ch. 300-2-3.05
HI	Undefined	N	N	HB915
ID	2 or more instances; determination is final unless appealed within 14 days	N	N	HB44
IL	Undefined	N	N	HB5632
IN	Undefined	N	N	HB1457
IA	Undefined; for contributory & reimbursable employers	N	N	SB110
KS	2 instances or 2% of prior year claims, whichever greater	N	N	HB2105
KY	6 instances or 2% of calendar year claims, whichever greater; includes reimbursable employers	N	Y	HB102
LA	Undefined	N*	N	Pre-existing law
MA	n/a	N*	N	SB1890
ME	2 instances or 2% of prior year claims, whichever greater	N	N	LD1311
MD	Undefined; burden of proof on employer or employer agent	N*	Y	HB583
MI	4 instances or 2% of claims in prior calendar year, whichever greater	N	N	HB4950
MN	2 instances or 2% of claims in prior 6 months, whichever greater	N*	N	SB2224
MO	2 instances or 2% of failures in prior year, whichever greater; burden of proof on employer	N	Y	MO DOL 8 CSR 10-4.210
MS	Undefined	N	Y	HB932
MT	Undefined	N	Y	HB127
NE	Undefined	Loss of appeal rights	N	LB1058
NH	Undefined	N	N	NH Amend. Emp. 303.08(g)
NV	Undefined; per prior law 11 days from mailing to respond to requests	N	N	SB36
NJ	3 instances or 20% of claims in prior year, whichever greater	N	N	SB2739

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Unemployment Insurance (UI) Integrity Laws by State

State / Territory	Pattern of Failure / Key Points	Additional Penalty	Good Cause Provision	Bill
NM	Undefined	N	N	prior law
NY	Undefined	N	Y	SB2607
NC	2% or more of prior year's claims	N	N	HB4
ND	Undefined; doesn't apply to reimbursable employers	N	N	HB1111
OK	Undefined; no appeal	N	Y 3-106 (c)	HB2204
OH	3 or more instances in calendar year	False statement: 2-10x weekly benefit amount	N	HB37
OR	Undefined	N	N	SB192
PA	Undefined	N	N	HB421
PR	n/a	n/a	n/a	status unclear
RI	Undefined	N	N	RI SB683 & HB5700
SC	3 or more instances or 3% of requests within a calendar year, whichever greater. Burden of proof on employer.	N	Y	HB3751
SD	Undefined	N	N	HB1055
TN	Undefined	N	N	Pre-existing law
TX	2 or more instances	N	Y	SB1537
UT	Undefined	N	N	prior law
VA	4 or more instances	\$75 after 3rd offense	Y	SB775
VI	unclear	unclear	unclear	Pre-existing law
VT	undefined	N*	Y	SB290
WA	2 instances in prior 2 years or 20% of total current claims, whichever is greater	N	Decided by commissioner	SB5355
WV	undefined	N	N	HB4542
WI	5% or more of cases appealed to tribunal	Right to agent representation revoked	unclear	prior law
WY	Greater of 2 instances or 2% of claims in prior year	Overpayments assessed 20% penalty plus 5% penalty on unpaid balances	unclear	SB73

*Pre-existing Employer Penalties for Violations of UI Integrity Under State Law:

CA: False statement penalty- up to ten times the weekly benefit amount.

LA: False statement penalty- \$50-\$1,000

MA: Penalty of \$25 per instance and loss of right to appeal

MD: Penalty of \$15 per instance

MN: Insufficient response penalty: employer to pay the amount of overpaid unemployment benefits into the trust fund. Additionally, false statement penalty, either \$500 or 50% of overpayment (whichever is greater).

VT: Penalty of \$100 per instance.

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Key Points to Keep in Mind About UI Integrity Legislation:

Many of the new UI Integrity laws have specifically defined how they will interpret the following key terms: “timely,” “adequate,” and “pattern of failure.” While we have provided an overview of the pattern of failure in our grid, it’s worth taking a closer look at the relevant statute for any unique definitions of timely and adequate in your state(s) of operation. You can read about the details of many states’ UI Integrity legislation on the ETS website here.

States often interpret “timely” response as within 7-10 days. “Adequate” response is more ambiguous and will require employers and their agents to follow state determinations and future clarifications as to the necessary level of detail where it is not already defined.

Your Go-Forward Strategy for UI Compliance and Reduced Financial Risk

In the recovering economy, employers continue to feel increasing pressure from rising employment tax costs, including ongoing FUTA credit reductions, state assessments to finance bonds and replenish state unemployment funds, elevated wage bases, and tables with higher unemployment tax rates. Over the past several years, the average annual unemployment cost per employee has more than doubled to over \$500, and the average charge per unemployment claim has risen to over \$7,000.

Fortunately, ETS can help you effectively manage your employment tax costs with proper tools and training. Our UCM Plus program can reduce your overall employment tax and unemployment claims expenses while improving your compliance and reducing your exposure to UI Integrity-associated penalties.

- **Training:** All personnel involved in on-boarding and termination (HR and managers) should be trained for compliance in employee review, discipline, documentation, and agency requests for detail.
- **Data Access:** On-demand, real-time, 24/7 access to claims data (including associated notes and supporting documentation) facilitates employer ability to respond to agency requests both timely and accurately.
- **Leveraging Data for Strategic Improvements:** Use robust claims reporting features to examine protest rates and win rates globally, regionally, by department, and at location level. Comparing data by location, state, or against industry benchmarks can reveal problem areas which can then be addressed. This arms employers with the information they need to evaluate their current program’s effectiveness and to identify “next steps” to reduce their risk exposure and overall UI costs.

For compliance, efficiency and unemployment cost control, contact ETS.



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