

# Unemployment Insurance (UI) Integrity

## A Focus on Compliance



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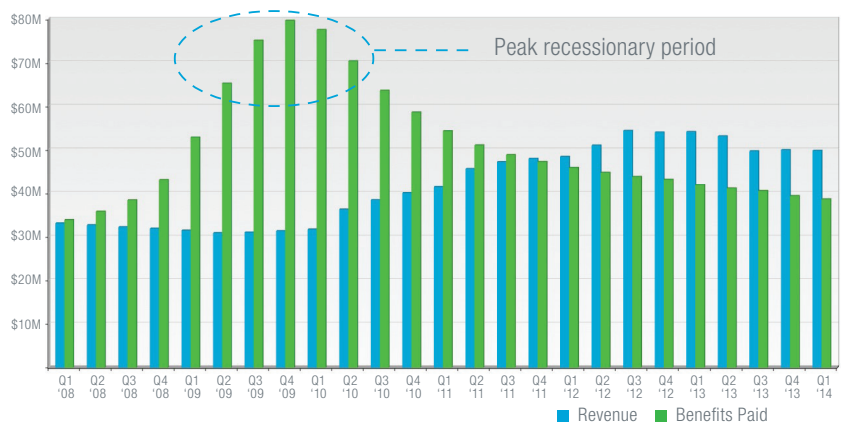
May, 2015

### The State of the UI System

In 2009, with unemployment rates nearly double historical norms, UI benefit payments increased significantly and reached an annual high of nearly \$80 billion (Fig. 1). The effects of this recent recession continue to impact unemployment reserves and a renewed focus has been placed on the integrity of the UI system as states look to replenish insolvent trust funds while minimizing benefit overpayments moving forward.

**Figure 1: UI Benefit Contributions / Payments**

Source: U.S. DOL UI Data Summary, 12 months rolling period, (000s)



Employers and state agencies together share in the responsibility, as well as the administration, of the UI program. While states are required to ensure that individuals meet eligibility requirements and receive their unemployment benefits, employers remain responsible for providing the states with the information needed to make an accurate determination.

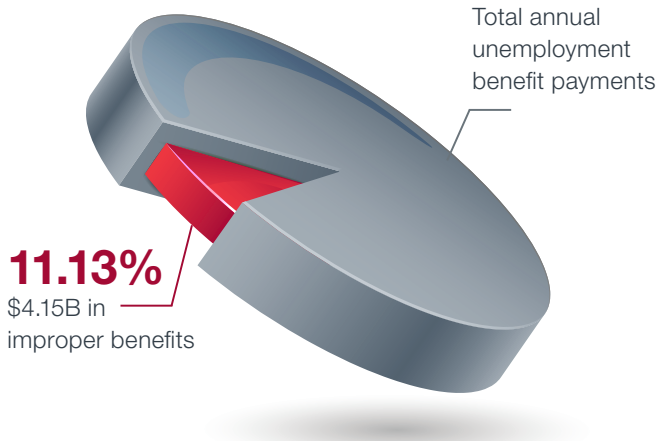
To facilitate this collaboration, states notify employers when a request for unemployment benefits is made, and maintain established parameters for timeliness and accuracy of employer response. However, despite the current system, improper UI benefit payments continue to occur as a result of late, incomplete, or inaccurate responses to state UI information requests. In addition, 10 states currently maintain insolvent unemployment trust funds<sup>1</sup> due to lingering effects of the recent recession, including a significant amount of benefit overpayments.

### CONTENTS

- 01 The State of the UI System
- 02 A New Federal Mandate
- 03 The New Employer Penalties
- 06 A New Perspective on UI Compliance
- 08 A Successful Strategy Moving Forward

**Figure 2: Unemployment Benefit Overpayments**

Source: U.S. DOL, 2014



**A New Federal Mandate**

To improve the integrity of the UI system and reduce the prevalence of improper payments (Fig. 2), a federal mandate was recently developed to address the timeliness and accuracy of employer response to state requests. The Trade Adjustment Assistance Extension Act (TAAEA) of 2011 provides for a statutory subsection in the Federal Unemployment Tax Act (FUTA) which mandates that state UI agencies prohibit relieving employers of benefit charges to their unemployment tax account when both of the following scenarios exist:

- UI benefits were improperly paid because the employer, or their agent, was at fault for failing to respond in a timely or adequate manner (Fig. 3) to the agency’s request for information (RFI) relating to the unemployment claim.
- The employer or agent has established a pattern of failing to respond to such requests in a timely or adequate manner.

**Figure 3: FUTA Subsection Definitions**

Because the federal UI mandate is open to state interpretation, additional guidance is as follows:

Timely response	A "timely response" has been interpreted by most states to be in the range of 7-10 days (similar to previous guidelines).
Adequate response	While it is clear that information must be provided in response to every question in the RFI relating to the claim (as demonstrated through the SIDES framework), the exact level of detail and documentation required to ensure compliance is more difficult to define. Both employers and their Unemployment Cost Management providers will need to monitor state determinations, including the level of detail that prompts successful appeals, in order to develop a reasonable understanding of state requirements moving forward.
Pattern of failure	The criteria for sustaining a "pattern of failure," on the other hand, has been more distinctly defined with many states interpreting this as the greater of two or more instances or two percent or more of claims within the prior year.

Furthermore, section 3303(f)(2) of FUTA permits states to impose even stricter standards in limiting relief from charges, such as, but not limited to, denying relief from charges to an employer after the first instance of an inadequate or delayed response to a claim.

**The New Employer Penalties**

This new FUTA legislation, at a minimum, requires all states to prohibit the relief of unemployment benefit charges resulting directly from an employer’s (or their agent’s) pattern of failure to adequately respond to state UI information requests. Under these new requirements, employers are expected to improve the quality of information provided to state unemployment agencies at the front end of the UI claim process, rather than waiting until after the initial determination is rendered to perfect their response.

Even if an employer is able to reverse an unfavorable determination at an unemployment hearing, the consequence of not providing sufficient details up front is a loss of benefit charge relief from the date of initial charges through the date of successful appeal or hearing. Should this increase in benefit charges negatively impact employer UI tax rates moving forward, the monetary impact could be significant.

However, the new UI Integrity legislation does not specifically indicate that employers lose appeal rights due to insufficient response. Therefore, employers may still (in most states) appeal an unfavorable claim determination and potentially eliminate the remainder of the charges. However, as the TAAEA does allow states to increase the severity of the penalties for non-compliance to UI related information requests, several jurisdictions have taken it upon themselves to legislate the loss of appeal rights to employers who provide an insufficient claim response. As a result, employers in these states may lose the opportunity for claims relief for the full duration of the unemployment claim.

#### Figure 4: UI Integrity Penalties by State

While all jurisdictions were required to enact legislation eliminating the relief of unemployment benefit charges, there has been a variety of state interpretations of the mandate, including additional penalties. The following matrix provides additional guidance on some of these details.

State	"Pattern of Failure" Defined	Additional Employer Penalties Beyond Elimination of Charge Relief	Overpayment Rate
AK	Greater of 2 instances or 2% of claims within prior year	None	16.89%
AL	2 or more instances	None	9.834%
AR	51% of claims in preceding calendar quarter (or 3 instances if total instances is < 5)	None	9.441%
AZ	Greater of 5 instances or 5% of total claims within prior year	None	13.45%
CA	2 or more instances related to individual claim	False statement— Up to 10x the weekly benefit amount *	7.013%
CO	Not defined	None	14.18%
CT	Not defined	None	3.433%
DC	Not defined	None	18.1%
DE	Not defined	None	15.49%
FL	Not defined	None	7.02%
GA	3 or more instances within a calendar year	None	18.66%
HI	Not defined	None	7.336%
ID	2 or more instances	None	15.61%
IL	Not defined	None	18.04%
IN	Repeated and documented failures	None	11.93%
IA	Not defined	None	10.01%

State	"Pattern of Failure" Defined	Additional Employer Penalties Beyond Elimination of Charge Relief	Overpayment Rate
KS	Greater of 2 instances or 2% of total claims within prior year	None	21.9%
KY	Greater of 6 instances or 2% of total claims within a calendar year	20% of overpayment plus additional 5% of unpaid balance at the end of every 6 months.	7.83%
LA	Pattern not required to establish penalty	Loss of appeal rights on any issue other than adequate and timely response. False statement—\$50-\$1000*	11.36%
MA	Pattern not required to establish penalty	Loss of interested party status. \$25 per instance and loss of appeal rights*	9.572%
ME	Greater of 2 instances or 2% of total claims within prior year	None	22.84%
MD	Not defined	\$15 per instance*	16.86%
MI	Greater of 4 instances or 2% of total claims within prior calendar year	None	17.45%
MN	Greater of 2 instances or 2% of total claims within prior 6 months	Employer must pay the trust fund the amount of the overpaid unemployment benefits. Additional False Statement penalty of \$500*	6.953%
MO	Greater of 2 instances or 2% of total claims within prior year	None	7.544%
MS	Not defined	None	10.19%
MT	Not defined	Loss of interested party status	16.3%
NE	Not defined	Loss of appeal rights	13.8%
NH	Not defined	None	5.081%
NV	Not defined	Loss of appeal rights*	27.71%
NJ	Greater of 3 instances or 2% of total claims within prior year	None	21.1%
NM	Not defined	None	29.4%
NY	Not defined	Loss of interested party status	8.558%
NC	2% or more of total claims within prior year	None	16.24%
ND	Not defined	None	15.22%
OK	Not defined	None	6.136%
OH	4 or more instances	None	13.26%
OR	Not defined	None	13.16%
PA	Not defined	None	14.67%

State	"Pattern of Failure" Defined	Additional Employer Penalties Beyond Elimination of Charge Relief	Overpayment Rate
RI	Not defined	None	6.564%
SC	Greater of 3 or more instances or 3% of claims within a calendar year	None	16.5%
SD	Not defined	None	10.5%
TN	Not defined	None	18.89%
TX	2 or more instances	None	9.967%
UT	Not defined	None	10.09%
VA	4 or more instances	\$75 after third offense	7.277%
VT	Not defined	\$100 per instance*	15.72%
WA	Greater of 3 instances within prior two years or 20% of total current claims	None	10.31%
WV	Repeated and documented failures	None	6.305%
WI	5% or more of cases appealed to tribunal	Revocation of right to agent representation	23.09%
WY	Greater of 2 instances or 2% of total claims within prior year	20% of overpayment plus additional 5% of unpaid balance at the end of every 6 months.	13.04%

US DOL data and state laws/regulations (as of 1/29/2015)

\* This penalty was in the law prior to the new UI Integrity legislation.

### A New Perspective on UI Compliance

In compliance with this federal initiative, states are shifting increasing responsibility for UI Integrity to employers by enforcing more stringent penalties for non-compliance (Fig. 4). Employer response to unemployment claims is no longer perceived as a choice, but as a requirement that must be fulfilled in order to remain compliant with the new state regulations. Specifically, the employer perspective toward response to claims has transitioned in the following manner:

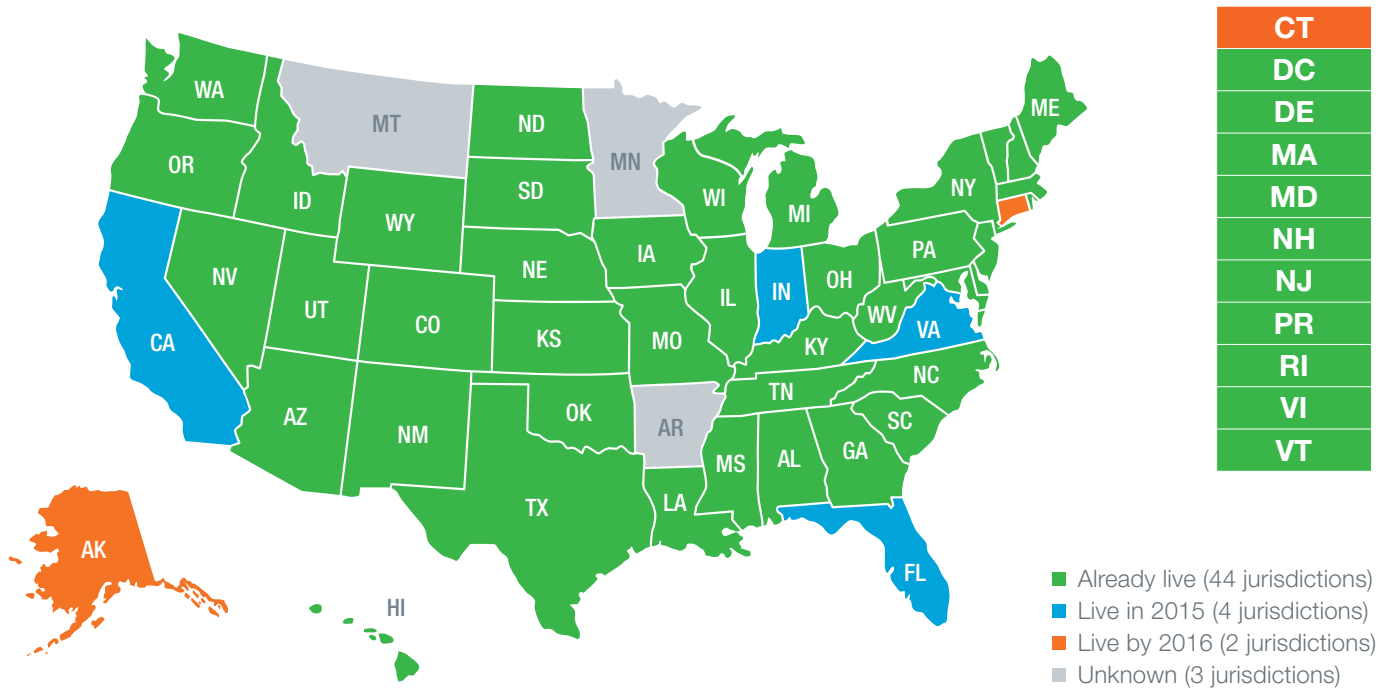
**In the Past:** Employers often made a choice between responding or not responding to an unemployment claim (i.e., while it was always technically required, a response was only considered worthwhile if the employer felt that benefits should not be paid to the claimant).

**Moving Forward:** Employers are required to respond to all claims in order to not only remain in compliance with new state regulations, but now to avoid real financial repercussions as well.

While employers have historically been inclined to respond (i.e., protest) only to those unemployment claims that were considered inaccurate, they will now be required to respond to all claims, regardless of their perceived legitimacy, in order to remain compliant with emerging state regulations and minimize their financial exposure.

**Figure 5: State Adoption of SIDES**

Source: NASWA/UISIDES.org, 2015; data provided as of 01/29/2015



**Trends in wage audits and earnings verifications**



Tracking of UI overpayments and underpayments



More aggressive follow up



More states adding penalties for non-compliance



UI Integrity legislation being applied to wage audit earnings verification requests

**NEW: UI Integrity Now Includes More Than Just Claims**

**Wage Audits and Earnings Verification**

**Current Situation**

While Separation Issues (ie., untimely or inadequate response) remain a significant cause of improper payments, Benefit Year Earnings (which refers to a claimant who has collected unemployment benefits for the same weeks in which he or she earned wages) may pose an even greater challenge—representing over 30% of overpayments<sup>1</sup>. With millions of trust fund dollars at risk, state UI agencies are now expanding their focus beyond claim requests to wage audit and earnings verification request strategies.

Benefit Payment Control (BPC) is responsible for protecting the UI Trust Fund by preventing, detecting, and recovering benefit overpayments. A primary method for accomplishing this is by cross-matching wages to benefits, and issuing an audit form to the new employer to confirm whether or not a claimant received earnings during the week(s) in question. In addition, state UI agencies conduct weekly “New Hire” audits to detect benefits that may have been overpaid to newly hired claimants earning wages in those same weeks.

With a heightened focus on overpayments, some states are now applying the UI Integrity legislation to wage audits and earnings verifications, and enforcing penalties for inadequate audit response. While historically, an employer's tax account would be credited upon discovery of overpayment (regardless of payment recovery), that may no longer be the case today.

### Solutions

Although Wage Audits and Earnings Verification Requests have historically been paper-based documents delivered via U.S. mail, a number of automated solutions such as Web-based online response or Electronic File Transfer (EFT) have emerged, thereby reducing the instance of untimely response.

However, a significant challenge remains due to requirements that earnings information be provided in a Sunday through Saturday weekly time period (because this is how unemployment benefits are paid). Unfortunately, many employers don't report pay periods in this configuration, creating a difficult situation when it comes to compliance and UI Integrity.

Moving forward, states are expected to increase their focus on wage audits and earnings verifications as they strive to meet a federal mandate that UI overpayments be held to less than 10%. To address this goal, Third Party Administrators (TPA), the Information Technology Support Center (ITSC) and the National Association of State Workforce Agencies (NASWA) will continue working together to overcome these challenges and develop solutions that work for all stakeholders of the UI System.

### A Successful Strategy Moving Forward

With compliance functioning as a critical element of the unemployment claims management process moving forward, there are several proactive strategies for conforming to these new regulations while preventing unnecessary benefit payments.

- **Rapid and accurate claims response:** Providing timely, accurate, and complete documentation in response to all claims is critical to not only avoiding non-compliance penalties, but to ensure proper determinations and minimize improper payments as well. The use of the State Information Data Exchange System (SIDES),

which is now available in the majority of states (Fig. 5), expedites the delivery of critical claims information online while simultaneously supporting data integrity.

*Note: Front-end case management applications can further enhance the SIDES interface through a customized information response interface—ensuring that employers provide adequate claims response in the most efficient manner.*

- **Easy access to employee data and case history:** The availability of key data, notes, and documentation, which is needed in response to state requests regarding unemployment claims, ensures that employers are able to provide required information in a timely and accurate manner.
- **Comprehensive workforce data reporting and benchmarking:** Robust reporting of unemployment claims management results, such as protest rates, win rates, and compliance, can help employers identify opportunities for improvement while assessing performance in comparison to industry standards.
- **Comprehensive employee training:** It is critical that HR personnel, as well as any managers involved in the hiring and termination process, are provided with training regarding how to most effectively take the required steps for employee review, document cases of misconduct, and respond to requests from state agencies.
- **Updating state databases:** By responding promptly to Wage Earning Verification requests and reporting new hires and re-hires to the states (including the National Directory of New Hires within 20 days of hire), employers ensure that state agencies are provided with data necessary for accurate unemployment eligibility determinations.

Adherence to these guidelines may not only reduce benefit overpayments, but may help improve state agencies' efficiency in administering the process while helping to minimize employers' financial exposure (in light of new compliance legislation).

## REFERENCES

<sup>1</sup> U.S. Bureau of Labor Statistics, 2013

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