MAJOR REVISIONS TO THE SOUTH CAROLINA UNEMPLOYMENT COMPENSATION SYSTEM

The South Carolina legislature has begun fixing the state's broken unemployment compensation system. With origins dating back to the Great Depression, the state Employment Security Commission is responsible for, among other things, providing interim compensation to employees who lost their jobs through no fault of their own. Currently, the state is paying out far more in unemployment benefits than it has collected through taxes paid by employers. This deficit spending during the current recession has resulted in South Carolina borrowing about one billion dollars from the federal government, a loan that must be repaid.

The legislature recognized the state's predicament and recently passed major revisions to the unemployment compensation system. The governor signed the bill into law this spring, immediately triggering several significant changes that fall into two general categories: (1) restructuring of leadership and mission, and (2) refining who can receive unemployment compensation benefits.

Leadership Changes

For many years, three commissioners have been responsible for managing a large state agency and serving as an appellate panel for unemployment compensation appeals. In recent years, the governor and others have criticized the leadership structure as not being accountable, lacking direction and ignoring funding problems. The new law addresses these problems and creates a new management structure with an employment-related focus.

The new law renames the South Carolina Employment Security Commission as the Department of Employment and Workforce. This change reflects the shift in focus from unemployment to re-employment and workforce development. To lead the newly named agency, there is an executive director who is appointed as an at-will employee by the governor, with legislative input, and who is a member of the governor's cabinet. The three former commissioners will no longer lead the agency; their role is to hear appeals.

The new executive director has broad responsibility for running the agency, plus a very specific list of reporting requirements. For example, the executive director must file a report with the legislature by next January recommending how to restore the depleted unemployment trust fund; provide a detailed annual report every October regarding actuarial issues such as funding; and reconfigure technology systems to generate regular reports relevant to workforce issues.

Benefit Changes

One identified cause of the depleted trust fund is too many payouts to those who were not truly "unemployed due to no fault of their own." For example, prior to the new law an employee who was "discharged for cause" – such as stealing, or even assault – could still receive unemployment compensation once a disqualification period had passed. The low threshold to receive unemployment benefits produced some unfair results and contributed to depleting the trust fund.

Following the changes to the law, there is now a new category, "discharge for gross misconduct," for which no unemployment compensation is paid. As a result, if an employee is proven to have been fired for stealing more than $50 from the employer, for example, that person cannot receive any unemployment compensation.

The new law identifies several categories constituting "discharge for gross misconduct," including:

- Willful or reckless damage of more than $50 to company property;
- Consuming alcohol or being under the influence of alcohol in violation of company policy;
- Assault or battery of an employee or customer;
- Insubordination, meaning a willful failure to comply with lawful, reasonable orders of management directly related to employment and as set forth in a job description; and
- Willful neglect of duty directly related to the job as set forth in a job description.

More to Come

The legislature is still grappling with a related and expensive issue: how to replenish the trust fund and repay the nearly billion-dollar loan. Analysis and debate has begun regarding this issue, but there is no legislative consensus yet. However, the ultimate solution will surely affect all South Carolina employers as unemployment taxes are increased and reallocated.

Conclusion

Employers must quickly catch up to these changes to South Carolina's unemployment compensation system. Disciplinary rules, employee handbooks and job descriptions should be reviewed and updated. Moreover, in light of the system changes, responding to unemployment compensation claims has become more important. Consult with one of our employment and labor attorneys about how to best deal with these new changes to the unemployment compensation system.

This Employment Law Update is published as a service to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation.

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