Watch Out For: Common Offsets that Reduce UI Benefits

States should not choose to reduce UI benefits because a jobless worker also receives Social Security retirement, some other contributory pension payments, or severance benefits. These reductions of UI benefits are often referred to as "offsets," since the other types of income or benefits are offset against UI benefits. State practices vary widely on the specific kinds of non-wage income that is used to offset UI benefits.

Under a 1980 amendment to the Federal Unemployment Tax Act, states are required to subtract from unemployment benefits any pension payments from a "base year" or chargeable employer (essentially employers within the last year and a half of the worker's employment). However, if a worker has paid into a retirement program, such as with Social Security retirement or a 401(k) plan, federal law allows states to take these employee contributions into account by eliminating or reducing the offset against UI benefits. As a result, states may disregard all, or a percentage, of Social Security retirement benefits. States also are free to ignore IRA rollovers.

Social Security offsets: A significant majority of states (35) have eliminated discrimination against older workers by stopping UI offsets based on Social Security retirement benefits received. Providing UI benefits to otherwise eligible older workers regardless of their receipt of Social Security benefits rewards work and reduces age discrimination.

However, 16 of the 51 UI jurisdictions (the 50 states and the District of Columbia) still offset all or part of Social Security benefits against UI benefits. Of these, only two states (Ohio and West Virginia) currently offset 100 percent of Social Security retirement benefits against UI benefits. Another fourteen states offset 50 percent of Social Security retirement payments. These are Colorado, Hawaii, Illinois, Louisiana, Maine, Massachusetts, Minnesota, Nebraska, North Dakota, Pennsylvania, Rhode Island, South Dakota, Utah, and Virginia.

There is a definite trend in the states toward repeal of policies offsetting Social Security retirement against UI.

- In 2002-03, Kansas and Wyoming both eliminated their Social Security offsets entirely.
- In 2003, Virginia reduced its 100 percent offset to 50 percent.
- In 2004, four more states eliminated or reduced their offsets.
  - Arizona eliminated its 45 percent offset.
  - Utah reduced its 100 percent offset to 50 percent.
  - Connecticut eliminated its 50 percent offset.
  - District of Columbia eliminated its offset of 100 percent.

Other pension offsets. A number of states have rules offsetting other types of pension benefits against UI that are stricter than required by federal law. For example, Michigan and New York offset IRA rollovers under the doctrine of "constructive receipt," even if the UI claimant doesn't touch the money. About a dozen states (including Indiana, North Carolina, Ohio, and Virginia), don't take employee pension contributions into account, meaning that affected individuals have their UI benefits reduced even though they have paid all or part of the costs for their pension benefits. If the worker had instead set the contribution aside in his or her savings account, there would be no UI offset when the worker withdrew the savings while also receiving UI. Pension offset rules should be examined to ensure that these types of inequitable or unfair policies are eliminated.

Severance pay offsets. Severance pay consists of non-wage payments provided by employers at the time that active employment is terminated. According to the U.S. Department of Labor, 20 percent of all employees in private industry were covered by severance pay arrangements in 2000, with 35 percent of professional, technical, and related employees eligible for severance pay.

Severance is paid as a reflection of employees' prior service. During layoffs or workplace closings, severance is sometimes provided voluntarily as partial compensation for loss of employment, fringe benefits, and job security. In other cases, severance is an existing fringe benefit offered to employees. In either case, severance pay is not paid with respect to weeks after employment has ended. For this reason, severance should not be treated as wages and should not be offset against UI benefits. Instead, UI benefits are intended as compensation for involuntary unemployment after a layoff and should not be impacted by the receipt of severance pay.

References

27 AM. JUR. 2D *Employment* § 70 (2002).

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