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Unemployment Compensation — Rules Changes You Need to Know

Pennsylvania has recently made significant changes to the Unemployment Compensation Law, some of which are already in effect and others of which will become effective **January 1, 2013**. Here are some changes for you to consider:

- **Severance payments.** In the past, severance payments or salary continuation did not affect UC benefits. This is no longer true. Now, a severance payment will reduce your weekly benefits if it exceeds 40% of the statewide average annual wage (about $17,800). Severance pay will be divided by the claimant's average full-time wage and it will also be offset against UC benefits for the amount of weeks covered. SFDPK attorneys can help you with severance pay calculations and will assist you in structuring your UC claim so you will receive the maximum amount of benefits possible.
- UC claimants must now engage in an active "**work search.**" Registration with CareerLink is mandatory and claimants must keep a record of their work search. Claimants who fail to do so may be charged with fault and fraud overpayments, which may result in repaying benefits and paying fines and penalties. Claimants may be charged for up to ten years.
- Claimants were able to work part-time and earn up to 40% of their weekly UC rate without any reduction in benefits. These allowable part-time earnings are called the **Partial Benefit Credit.** Starting in 2013, the amount a claimant can earn part-time while collecting UC will decrease from 40% to 30%.
- The **maximum weekly benefit** rate has been frozen at $573 through 2019.

Pennsylvania also made changes that will require individuals to earn more "credit weeks" (18 instead of 16) and more wages ($100 per credit week instead of $50) to be eligible for UC. Starting in 2013, claimants may not open a second claim after their first claim has expired unless they have earned 6X their weekly benefit rate in *covered employment* as defined by the Act. For many years, claimants were able to satisfy the 6X requirement through casual work (not a "regular" job).

SFDPK attorneys can help you to complete the complicated process of applying for and qualifying for UC benefits.

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The Law & You– Labor Day 2012

This Issue...

We are progressive in outlook and aggressive in our pursuit of clients' rights. Whether representing individuals or classes, we work hard, using our heads and our hearts to get the best results.

Call our Pittsburgh office to discuss your legal questions.

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SFDPK and Union Representation

SPDPK represents unions on several fronts. We represent the United Steelworkers in retiree health class actions; represented retired UAW members in retiree health class actions against GM, Ford and Chrysler; and represent several local unions in labor negotiations with employers such as KDKA and WQED.

Recently, SFDPK attorneys John Stember and Emily Town were involved in unusual negotiations on behalf of the Arena Football League Players Union (AFLPU). Initially, the AFL built a successful franchise. Sold out arenas and six-figure player contracts were common. Players had a union and earned a living wage, until that league was forced into bankruptcy. A new AFL emerged, without a union, and it drastically reduced player salaries.

In 2011, the players voted for a new union, the AFLPU. For more than a year, the owners refused to bargain meaningfully. When the players authorized a strike before the 2012 opener between Pittsburgh and Orlando, the League fired all players on both teams, telling them they could not play unless they resigned from the union. This demand, known as a "yellow dog contract," has been illegal for more than 75 years.

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The Pittsburgh owners also left the fired players in Orlando with no way back home and locked many out of their league-supplied housing. The AFL also suspended a team rep for distributing Union cards and suspended a player for posting work-related comments on a players-only Facebook page.

SFDPK began representing the AFLPU after the mass firings and filed Unfair Labor Practice charges, alleging multiple violations of federal law. The National Labor Relations Board found merit, issued complaints and prepared to seek a 10-J injunction (a highly unusual remedy used only for flagrant violations of labor law). The Union also had a successful strike in Cleveland, resulting in the first game cancellation in AFL history.

The Union's actions eventually brought the League back to the table for serious bargaining, including a marathon session in Chicago. Finally, in August, on the eve of Arena Bowl XXV, the League agreed to the first AFLPU contract. Players have now received lost wages and are now protected by a five-year comprehensive labor agreement.

Benefits: The Long and Short of It

Many employers sponsor short term disability ("STD") plans that pay some income to employees unable to work due to a sickness or injury. STD plans usually give benefits for relatively short periods of time (90 or 180 days). Some employers also sponsor long term disability ("LTD") plans that give ongoing benefits to employees who remain disabled after their STD coverage ends.

If you are on an STD leave and do not know if you will be able to return to work when your leave ends, it is very important that you apply for any available LTD benefits. If you are able to go back to work, your LTD application can easily be withdrawn. However, if you do not apply for or ask about LTD, you may miss important deadlines and lose benefits. Even if an employer tells you that you are not eligible or you must wait for STD benefits to end, you may be eligible for LTD. If your application is late, you may not receive needed benefits.

SFDPK will assist you in making claims for STD or LTD benefits and appeal any denial or termination of these benefits.

The Affordable Care Act and How it Affects You

We asked our lawyers about the implications of the new healthcare system and what it means for our clients:

Earlier this summer, the Supreme Court upheld most of the provisions of the Patient Protection and Affordable Care Act of 2010 (sometimes called "Obamacare") that requires most Americans to obtain health insurance or pay a penalty. The Act is expected to reduce the number of uninsured Americans and to reduce health care costs.

What does the Affordable Care Act mean for you? If your health plan was in effect before March 23, 2010 (the date the Act became law), your plan may be "grandfathered" (allowed to continue) and certain provisions of the Act may not apply to you until a new plan is in effect. Grandfathering may also apply if you receive coverage under a union contract ratified before that date. Grandfathering is complicated; we can help you to figure this out.

You may already benefit from certain key provisions of the Act. Adults with pre-existing conditions are eligible to join a temporary high-risk pool, which will be replaced in 2014 by "health care exchanges." To qualify for coverage, applicants must have a pre-existing condition and have been uninsured at least six months. Premiums are based on the general population, not just on those with higher health risks, which means premiums should be lower.

Insurers cannot impose lifetime caps or dollar limits on certain essential benefits, such as hospital stays. They cannot exclude pre-existing medical conditions for children under 19, nor can insurers drop those who become sick. You can lose coverage **only** if you commit fraud or intentionally misrepresent material facts, and then only if your insurer gives you notice.

"We are seeing problems with insurers' failure to comply with provisions of the Act"

Children may now remain on their parents' insurance plans until they turn 26, even if they are not in school. New plans must cover certain preventive care and medical screenings, with no deductible or co-payment. These preventative procedures include mammograms and colonoscopies, as well as contraceptives approved by the Food and Drug Administration.

If an insurer does not spend a certain percent of premium dollars on eligible expenses, it must issue a rebate to policyholders. Health plans will also have an effective internal and external appeals process that complies with state law.

Other Act provisions, including the "individual mandate," will go into effect January 1, 2014. Individuals that are not covered by an acceptable insurance policy will pay a penalty of $95, or up to 1% of income over the filing minimum, whichever is greater. This will rise to a minimum of $695 ($2,085 for families), or 2.5% of income over the filing minimum, by 2016. There are certain exemptions.

As of January 1, 2014, insurance companies may not discriminate against some insureds or charge higher premiums based on gender or a pre-existing medical condition, and they cannot impose annual spending caps. Employers with more than 50 employees that do not offer health care to full-time workers will pay a penalty of $2,000 per employee.

The Act also calls for the creation of health insurance exchanges in 2014, which are state-established health care plans that will offer plans to small employers and individuals eligible for federal subsidies. The subsidy is a tax credit that applies to households with income up to 400% of the poverty line. You can get the subsidy only if you are ineligible for other coverage.

Finally, the Medicare Part D coverage gap (referred to as the "donut hole") will be gradually phased out and entirely closed by 2020.

We are seeing problems with health insurers' failure to comply with provisions of the Act. SFDPK will be enforcing rights and benefits under the Affordable Care Act, both for individuals and for groups of plan participants.

Please call us if you have any questions about your benefits and if they comply with the new law. It's complicated; we can help.

Sarbanes Oxley and Dodd-Frank Act

After the financial scandals of the past decade, Congress enacted two major laws that include significant protections for whistleblowers: the Sarbanes Oxley Act ("SOX"), which protects whistleblowers who report securities laws violations, and the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), which enhanced the protections available to whistleblowers in the financial services industry.

Under this legislation, an employer cannot retaliate against an employee who provides information to the SEC relating to a securities law violation. Dodd-Frank also allows a whistleblower to receive cash awards of 10% to 30% of amounts that the SEC recovers based on the whistleblower's report. In the first payout to a whistleblower under this program, the SEC announced that the employee received the maximum award of the amount collected – almost $50,000 – for providing important information that allowed the SEC to prevent further fraud.

There are many important things for employees to think about in any whistleblower case, including where, when, and how to blow the whistle. SFDPK can assist in your decision-making and help you to navigate this technical and complex area of the law. If you have questions about your rights under SOX, Dodd-Frank, or other laws that protect whistleblowers, please call us at **(412) 281-8400** or visit our website: **www.stemberfeinstein.com**.

Medicare Victory

We have considerable experience and expertise at representing individuals who were denied benefits under their employer-sponsored, insured plans, and have used this experience to help enrollees in Medicare Advantage plans. In a recent victory, SFDPK attorneys Tybe Brett and Emily Town successfully changed the Medicare rules and expanded national coverage of liver transplants for patients with certain cancers. Under the old and outdated Medicare rules, only one type of cancer (hepatocellular carcinoma) was covered for liver transplantation. In light of progress in medical treatment, SFDPK lawyers were able to expand Medicare coverage for liver transplants to patients with other types of cancer. Now, Medicare enrollees will have access to this life-saving procedure.

SFDPK has helped other patients who were denied coverage by health insurers, claiming that procedures ordered by their doctors are not medically necessary or are experimental.