How Employers Can Help Curb Unemployment Fraud During the Pandemic

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The federal government expanded unemployment insurance benefits during the coronavirus crisis, which has led to an uptick in fraudulent claims, according to the U.S. Department of Labor (DOL). Employers need to take steps to help identify and prevent such fraud.

"The specific obligations of an employer vary by state, but generally employers are required to promptly report any suspected fraud to the state agency that administers unemployment insurance benefits and cooperate in any subsequent investigation," explained Lynn Luther, an attorney with Eastman & Smith in Toledo, Ohio. "Employers may also be asked to respond to more frequent information requests as agencies take additional steps to verify claimant information."

Elizabeth Liner, an attorney with Baker Donelson in Baton Rouge, La., noted that employers are often the first to catch fraud when they review a notice from the state about a worker's unemployment insurance claim. "So employers should be hypervigilant in reviewing claims."

Feedback

Here's what employers need to know about unemployment benefits scams and what they can do to help curb fraud.

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Coronavirus and COVID-19 (www.shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx)

'A Perfect Storm'

"The COVID-19 pandemic seemed to create a perfect storm to exacerbate unemployment insurance fraud," Luther said. She's not surprised about the increase in unemployment insurance fraud, since the number of claimants requesting benefits has increased.

Additionally, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and subsequent stimulus bills expanded eligibility for benefits, lengthened the period of time during which those benefits could be received and increased the amount of the weekly payments.

"All of those changes arguably made unemployment insurance fraud more lucrative than it had been in the past," Luther noted.

Brian Schnese, senior risk consultant for Chicago-based insurance brokerage HUB International, said the government wanted to get funds to the people who needed them as fast as possible.

Each state has its own system for processing unemployment claims. "State agencies may not have had the right controls in place and became a magnet for criminals," he said.

In response to the rise in unemployment insurance (UI) fraud, the DOL issued new guidance (https://www.dol.gov/newsroom/releases/eta/eta20210414) to state agencies on April 14. "The guidance follows unprecedented increases in UI claims amid the pandemic and related surges in fraudulent filings in states' systems by sophisticated criminal rings using stolen or 'synthetic' identities—false identities composed of real and fake information," the DOL said.

The guidance aims to help states identify and halt payments on claims that appear to be using stolen or fake identities and assist unemployed workers who have been incorrectly identified as making potentially fraudulent claims.

This is not the first time the DOL has issued guidance regarding unemployment insurance fraud since the pandemic began. "So this further communication demonstrates how widespread the problem has become and that the states need additional assistance to curb it," Luther noted.

Employer's Role in the Process

Employers receive a notice from the applicable state agency when a worker files an unemployment claim.

When you get that notice, look for red flags that someone's identity may have been stolen, Liner said. Perhaps a claim for unemployment benefits is from a worker who is still employed or a former employee who hasn't worked for the company in many years.

Liner urged employers to take prompt action to protect those individuals.

Adam Kemper, an attorney with Kelley Kronenberg in Fort Lauderdale, Fla., said employers should be responsive to inquiries from state agencies and provide accurate information. Additionally, he said, as part of the offboarding process, employers should give displaced workers information about unemployment benefits and let them know who to contact in human resources if they have any questions.

If a worker is not eligible for unemployment benefits, Kemper noted, the employer is responsible for informing the state agency that something is incorrect in the worker's application for benefits. For example, if an employee voluntarily resigned or was fired for gross misconduct, the employee may not be eligible for unemployment benefits, though state laws vary with regard to eligibility.

Employers may need to attend an unemployment hearing to help the state agency make a benefits determination.

Schnese suggested that employers take the following steps to safeguard against unemployment insurance fraud:

- Accurately and promptly report new hires to government agencies so employment data can be compared later to unemployment claims. *[SHRM members-only toolkit: Complying with New-Hire Reporting Requirements* (www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/complyingwithnew-hirereportingrequirements.aspx)*]*
- Check unemployment reports for accuracy.
- Report potential fraud immediately so state agencies can act promptly.
- Assess your organization's cybersecurity to ensure the company's data wasn't accessed. Tell employees what the company is doing to protect their personal information.

Educating the Workforce

Employers should educate workers about unemployment benefits scams and tell them what to do if they are victims.

"Advise employees that this is out there," Schnese said. Tell employees how to recognize phishing schemes and other fraudulent behavior and who to contact if they encounter any issues. "Support your employees if they find out they are a victim."

Liner said, "If you receive a claim notice from the state and realize an employee was hit with a scheme, help them navigate the process of dealing with identity theft."

Employers can start by directing workers to identity-fraud resources (https://identitytheft.gov/) from the Federal Trade Commission.

Luther said employers should encourage workers who have been victims of identity theft to contact legal authorities as well as the applicable state agency.