

January 19, 2024

Mr. David Fish, Executive Director
Office of Legal and Regulatory Services
P.O. Box 110, 13th Floor
Trenton, New Jersey 08625-0110

Via email: david.fish@dol.nj.gov

SUBJECT: Department of Labor & Workforce Development, Division of Unemployment Insurance
Proposed Amendments: N.J.A.C. 12.17-2.1, 3.1, 3.2, and 21.3
Proposed New Rule: N.J.A.C. 12:17-3.8

Dear Mr. Fish:

The New Jersey Business & Industry Association, the National Federation of Independent Business, and the New Jersey Chamber of Commerce offer the following comments regarding the above-referenced Proposed Amendments and New Rule.

We support the intent of the Legislature and the Department of Labor & Workforce Development's Division of Unemployment Insurance ("the Division") in ensuring that eligible workers receive unemployment benefit determinations and payments in a timely manner. However, we are concerned about the significant potential administrative burden that this proposal would impose on our member companies that employ over 1 million residents. The below proposed provisions may negatively impact the affordability of conducting business in New Jersey and are, to our knowledge, materially more burdensome than those required by any other state.

Background on Unemployment Insurance employer obligations

Unemployment Insurance (UI) payments are intended to assist employees who become unemployed through no fault of their own. To administer the state's UI program, the Division conducts fact-finding with both employers and claimants. N.J.A.C. 12:17-3.1 currently requires that whenever a worker is separated from employment for any reason, the employer must provide the worker at the time of separation with the Department form entitled "Instructions for Claimant Benefits." Upon a worker's filing a claim for UI benefits with the Division, employers must provide the Division with employment and termination information requested by the Division to allow the Division to accurately determine the worker's eligibility for UI benefits.

N.J.A.C. 12:17-3.1, as amended, would add potentially significant new obligations for employers to provide comprehensive details about **each employee's separation from work**, regardless of whether that employee ever files a claim for UI benefits with the Division.

In practice, a material percentage of the New Jersey workforce does not file a claim for UI benefits following a separation from employment. Those workers may have already secured new employment, or

may have separated for personal reasons that would not qualify them to receive UI benefits. As an example, one of our member companies has determined that 20% of its terminated employees in New Jersey file claims for UI benefits. As proposed, this employer would now be required to provide information to the Division for the remaining 80% of terminated employees, resulting in a 5x increase in transactions without a discernable benefit to those workers or to the Division.

Comments on Proposed Amendments and Rule

The Proposed Amendments and Rule do not adequately consider the long-established role of third-party UI administrators in the UI process. A significant portion of New Jersey’s employers rely on third-party UI administrators (TPAs) to help meet their UI obligations. These TPAs perform a critical function: ensuring the smooth flow of timely and accurate information to and from each state’s UI agency and client employers. We are concerned that the Division has not substantively engaged with the TPA community to the extent the Proposed Amendments and Rule will impact client employers.

We encourage the Division to hold substantive process discussions with the TPA community to ensure that any proposed Amendments and Rule will be thoroughly coordinated with TPAs and/or the State Information Data Exchange System (SIDES)¹.

Proposed Amendment 12:17-21.3 does not define the key process step impacting employers. The Proposed Amendment provides that “The separation information provided to the Division by the employer shall include a comprehensive statement of facts surrounding the separation from work” but leaves that phrase otherwise undefined.

We encourage the Division to consider refining this language to be more specific about what it considers a “comprehensive statement of facts surrounding the separation from work.” Specifically, we urge the Division to consider the fact that a significant number of separated employees will never file claims for UI benefits and to minimize the associated compliance burden on the state’s employers.

For example, the Division could specify that it considers the employer’s providing the reason for separation (e.g. voluntary quit, violation of policy, job abandonment) as compliant with this requirement. If the Division instead requires employers to provide detailed, employee-specific termination documentation for each separating employee—within one business day of that employee’s termination—that would be an unprecedented and time-sensitive burden that does not to our knowledge apply to employers in any other state or jurisdiction.

We also encourage the Division to ensure that its process allows employers to upload information for multiple employees simultaneously, using a standardized electronic format. Otherwise, employers will be forced to resort to 1-by-1 manual entry into the Division’s online system.

¹ SIDES is a system offered by the National Association of State Workforce Agencies in partnership with the US Department of Labor. It “supports the unemployment information processing services...that provide speed, accuracy and security to the processing of unemployment claims. SIDES is built specifically for states, employers, [and] TPAs...” See <https://www.naswa.org/uisides/about> for more information.