



# **UWC Provides Model Employer Penalty Legislation to Meet Federal Minimum Requirements**

In response to requests from employers and state agencies, UWC recently sent letters attaching model legislation that could be used to meet the new federal employer penalty provisions enacted by Congress in 2011. The model was drafted so as to minimize unnecessary costs to employers and their agents and minimize costs to state agencies administering unemployment compensation claims.

In 2011, Congress enacted Section 252 of the Trade Adjustment Assistance Extension Act of 2011 to prohibit states from relieving charges for state UI benefits to employer UI accounts if the state determined that an erroneous UI payment had been caused by the failure of an employer or its agent to respond timely or adequately to a request for information, and the employer or its agent exhibited a pattern of failing to respond to such requests.

A number of states already have provisions designed to penalize employers and their agents if they fail to provide information. Many states also have provisions designed to encourage employers and agents to report through the use of electronic means. The US Department of Labor in reviewing the new federal requirement provided some guidance but did not provide model language to meet minimum federal requirements.

UWC has developed model language designed to meet federal requirements and to avoid confusion with other state measures. Our goal is to reduce erroneous payments and overpayments through efficient and effective exchange of information in the claims determination and adjudication process.

In developing the model legislation we addressed the federal requirements by assuring that:

- 1) The language tracks the federal statutory language closely;
- 2) The employer and agent responses at issue are only those relating to claims for unemployment compensation and not unrelated requests for other purposes;
- 3) The definition of causation is clearly tied to the employer or its agent that caused the erroneous payment;
- 4) The request for information must be in writing in order to be tracked for review;
- 5) The “pattern of failing” should be a reasonable definition – for a large company or an agent handling many employer accounts two failures in a year out of thousands of requests is not indicative of a “pattern of failing”;
- 6) The determination not to relieve an employer’s account of charges should be appealable as other determinations of charges to the employer’s account;
- 7) The effective date of the new provisions should be set to provide sufficient time to prepare for proper administration and no earlier than the federally required date beginning with erroneous payments established after October 21, 2013.

This model legislation may be used as a guide to the drafting of state legislation to meet the minimum federal requirements or may be added as a standalone provision or modified to fit within existing state provisions.

**UWC – STRATEGIC SERVICES ON UNEMPLOYMENT & WORKERS’ COMPENSATION**  
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Legislation is required to be effective with erroneous UI payments no later than October 22, 2013.

If you have questions about the model legislation please contact me.

Douglas J. Holmes

President

UWC – Strategic Services on Unemployment & Workers’ Compensation

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*“The Voice of Business on Unemployment & Workers’ Compensation”*

September 14, 2012

The Honorable Michelle Amante  
Massachusetts Division of Unemployment Assistance  
Charles F. Hurley Building  
19 Staniford Street  
Boston, MA 02114

Dear Ms. Amante:

We are writing on behalf of employers and their representatives to ask that state legislation to meet recent federal requirements be enacted to minimize unnecessary costs to employers and their agents and minimize costs to state agencies administering unemployment compensation claims.

UWC – Strategic Services on Unemployment and Workers’ Compensation (UWC) is a national organization which focuses its attention on unemployment insurance legislation and policy at the federal and state level. We count as members many national and state business trade associations, large employers, small employers and their representatives.

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- 7) The effective date of the new provisions should be set to provide sufficient time to prepare for proper administration and no earlier than the federally required date beginning with erroneous payments established after October 21, 2013.

This model legislation should serve as a guide to the drafting of state legislation to meet the minimum federal requirements and may be added as a standalone provision or modified to fit within existing state provisions.

We ask that you adopt this model in addressing the new federal requirements.

Sincerely,

Douglas J. Holmes  
President  
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Enclosure

## Section XXXX

An employer's account shall not be relieved of charges relating to a payment that was made erroneously from the (state unemployment benefit account) if the (state agency) determines that:

- (A) the erroneous payment was made because the employer, or the agent of the employer, was at fault for failing to respond timely or adequately to a written request from the (director of state agency) for information relating to the claim for unemployment compensation; and
- (B) the employer or agent has established a pattern of failing to respond timely or adequately to requests in subsection (A) of this section.
- (C) For purposes of this section
  - (1) "erroneous payment" means a payment that but for the failure by the employer or the employer's agent with respect to the claim for unemployment compensation would not have been made.
  - (2) "pattern of failing" means repeated documented failure on the part of the employer or the agent of the employer to respond, taking into consideration the number of instances of failure in relation to the total volume of requests. An employer or employer's agent failing to respond as described in subsection (A) of this section shall not be determined to have engaged in a "pattern of failure" if the number of such failures during the year prior to such request is fewer than two or less than two percent of such requests, whichever is greater.
- (D) Determinations of the (State agency) prohibiting the relief of charges pursuant to this section shall be subject to appeal or protest as other determinations of the agency with respect to the charging of employer accounts.
- (E) This section shall apply to erroneous payments established after October 21, 2013.