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REPORT OF LEGAL COUNSEL
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NEW UNEMPLOYMENT RULES REGARDING SEVERANCE CAN HURT!

In 2012 Pennsylvania enacted certain changes to the calculation and eligibility provisions of the unemployment compensation benefits law. One of the changes enacted was to create a partial offset of benefits against the receipt of severance pay. This change impacts substantially on how the receipt of severance payments can negatively impact on an employee's receipt of unemployment compensation benefits.

Section 404(d)(1)(iii) of the Pennsylvania UC Law provides that a claimant shall have the compensation reduced by the amount of severance benefits attributable to that week. Using the figures from an actual situation that arose in our practice, we can illustrate how this new provision creates a situation where a claimant loses a significant portion of the benefits to which they would otherwise be entitled.

In the example that is set forth below, the employee entered into a separation agreement with the employer when the employee's position was eliminated after more than twenty-five years of employment. The employer agreed to provide a severance package in the amount of \$36,050.04. The employee then applied for u/c benefits. The UC Office made a Determination that the employee was eligible for unemployment benefits at the maximum amount of \$573 per week. However, the UC Office then proceeded to a determination of the impact of the severance payments on that benefit. This requires calculating the amount of severance attributable to each week's payment.

The calculation of how much severance is attributable to a particular week is done as follows:

First, identify the average annual wage in Pennsylvania (currently the three-year average annual wage is \$46,180.68).

(over)

Then calculate 40% of that amount ($\$46,180.68 \times .40 = \$18,472.27$).

Subtract 40% of the average annual wage from the total severance paid to the claimant. In this case total severance paid ($\$36,050.04$) minus 40% of the average annual wage ($\$18,472.27$) equals $\$17,577.77$. This is the total deductible amount of the severance payments.

Next calculate the number of attributable weeks: Divide the deductible severance amount ($\$17,577.77$) by the employee's regular weekly wage ($\$1,387$) = 12.7 weeks.

This convoluted calculation ended up with the result that for the first 12-1/2 weeks of benefits, the claimant received zero! The severance attributable to those weeks canceled out the receipt of the normal u/c benefits the employee should have received in those weeks. In the eyes of the UC Office, the claimant was considered to have been paid the u/c benefits, but the claimant did not actually receive anything.

As a result of this new provision, care must be taken when negotiating provisions for severance benefits, whether in a CBA or in a plant-closing situation.

**RESPECTFULLY SUBMITTED,
ROBERT A. EBERLE, ESQUIRE**