

# Dealing with Uncooperative TPAs



## **NATIONAL EMPLOYMENT LAW PROJECT**

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# UI Appeals



- In 2007, the Unemployment Appeals Bureau reversed 652 cases in favor of employers who had failed to participate in fact-findings.
- This caused overpayments of \$771,327.34 (roughly 40% of all overpayments).
- Two-thirds of those employers used the same third party administrator accounting for \$516,541.34 in overpayments.

# Iowa Demographics



- In Iowa, most employers are small.
- Smaller employers who do NOT use a third party administrator overwhelmingly participate in fact-findings when they encounter the UI system.

The UI Collection Unit collects roughly 2/3 of overpayments through various mechanisms.



**THE PROBLEMS THIS CAUSES  
ARE AS FOLLOW:**

- Damages the integrity of the trust fund by drawing down the trust fund incorrectly and increasing the likelihood of a tax increase.
- Creates inefficiency and additional costs for the agency by setting unnecessary hearings and performing unneeded collections.
- Harms workers by allowing them benefits incorrectly and then pulling the plug (and demanding the benefits be repaid).

# Iowa Proposed Legislation to Remedy This



## **HOUSE STUDY BILL 600**

- b.** If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

However, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

# House Study Bill 600 Fails



- This bill failed for a variety of reasons, although it was the most efficient remedy.
- It simply stated that IWD shall not set-up a recovery if the overpayment was caused by the employer's failure to participate in the fact-finding process.
- The responsibility was placed squarely upon the employer.

# The Legislature, IWD and Business Groups Framed:



**SENATE FILE 2160**

**b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.**

**However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.**

**(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.**

# Third Party Administrators Targeted



- This bill went a different route altogether, targeting the third party administrator instead of the employer.
- It still relieved workers of the overpayment requirement in instances where the employer failed to participate;
- However, the employer is still non-charged following the reversal.

# The BIG Difference



- The big difference between the two bills lies in cases where a third party administrator was involved and failed to participate.
- The agency now tracks those instances where a third party administrator is involved, fails to participate in fact-finding and then appeals.
- If the third party administrator “demonstrates a continuous pattern of failing to participate in the initial determinations...” they shall be denied permission by the department to represent employers in matters before the agency.

# The Legislation Passed!



**IOWA ADOPTED RULES  
DEFINING PARTICIPATION AND  
A  
CONTINUOUS PATTERN OF  
NON-PARTICIPATION**

871-24.10



**EMPLOYER AND EMPLOYER  
REPRESENTATIVE PARTICIPATION  
IN  
FACT-FINDING INTERVIEWS**

## 24.10(1)



**“Participate,” as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation.**

## 24.10(1) cont'd



If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents,

## 24.10(1) cont'd



Including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set for in 871 – subrule 24.32(7).

## 24.10(1) cont'd



**On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.**

## 24.10(2)



**“A continuous pattern of nonparticipation in the initial determination to award benefits,” pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate.**

## 24.10(2) cont'd



Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

## 24.10(3)



If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

## 24.10(4)



**“Fraud or willful misrepresentation by the individual,” as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits.**

## 24.10(4) cont'd



**Statements of denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.**

**This rule is intended to implement Iowa Code section 96.3(7) "b" as amended by 2008 Iowa Acts, Senate File 2160.**

# QUESTIONS?



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