

2005 Legislative actions to the Employment Security Law that may impact South Carolina employers.

SUTA DUMPING

Section 41-31-125 was added to South Carolina's Unemployment Insurance Law by the state legislature in 2004 and subsequently amended during the 2005 legislative session. This section of law provides penalties for employers who engage in practices that unlawfully help them avoid unemployment tax liabilities (Referred to as SUTA Dumping). This also applies to those who may advise their clients to participate in this practice. SUTA Dumping is the practice whereby employing units may create new business entities, transfer their employees and, in some cases, a part of the business to deliberately avoid their current tax rate and possibly a negative reserve balance. Other employers have begun business by purchasing an existing company that has a low tax rate, discontinuing the purchased business enterprise, and evading the higher beginning tax rate for new employers. This legislation is aimed at preventing employers from abandoning their current experience rating history by forming a new business for the sole purpose of reducing the employer's current tax rate. These practices can have a substantial negative impact on the state Unemployment Trust Fund and can compromise state experience rating systems. The loss of revenue shifts the tax burden among all employers and results in all employers paying more unemployment taxes over time. If you have any questions about SUTA Dumping, please contact our Unemployment Insurance Tax Department at 803-737-3070.

EMPLOYEE DRUG TESTING

Section 41-35-120 (2) of the South Carolina Employment Security Law was amended to provide for the disqualification of individuals who refuse to take a drug test, or who test positive for illegal drugs or for legal drugs used unlawfully provided certain conditions are met. The enactment of this legislation July 1, 2005, requires employers to provide our agency with specific information in order for a disqualification of benefits to be imposed.

The required information is as follows: (1) the employer's drug policy and a copy of the drug test results, (2) verification that the drug test was performed by a laboratory certified by SAMSHA (Substance Abuse and

Mental Health Services Administration, formerly the National Institute on Drug Abuse), the College of American Pathologists, or the State Law Enforcement Division, (3) verification that the sample was collected and labeled by a licensed health care professional or individual authorized to do so by state or federal law.

Information including drug-test results, written or otherwise, received by us from an employer may be used for the purposes of determining eligibility for unemployment compensation, including any administrative or judicial appeal. Section 41-29-160 of the Employment Security Law requires that information obtained from any employing unit shall be held confidential and shall not be open to public inspection in any manner revealing the individual's or employing unit's identity.

HIPPA regulations, 45 CFR 164.512 (e), permit the use of protected health information in the course of any judicial or administrative proceeding.

DOMESTIC ABUSE

Section 41-35-125 has been added to the Employment Security Law so that an individual is eligible for unemployment benefits if the Commission finds that the individual left work voluntarily or has been discharged because of circumstances directly resulting from domestic abuse and; (1) reasonably fears future domestic abuse at or en route to the workplace; (2) needs to relocate to avoid future domestic abuse; (3) or believes that leaving work is necessary for his/her safety or the safety of his/her family. The individual is required to provide written corroboration of domestic abuse in order for the Commission to determine eligibility for unemployment benefits. The documentation can include police or court records or other official documentation of abuse from a shelter worker, attorney, member of the clergy, or medical or other professional from whom the individual has sought assistance. All documentation or evidence of domestic abuse acquired by the Commission under these provisions will be kept confidential unless consent for disclosure is given, in writing, by the individual.

Any unemployment benefits paid to an individual determined eligible under these provisions will not be charged to the account of any contributing employer.