Order of Commissioner Roberta Reardon

Regarding Unemployment Experience Rating Charges

On March 7, 2020, Governor Andrew M. Cuomo issued Executive Order No. 202 declaring a State disaster emergency for the State of New York to address the COVID-19 public health emergency. On April 1, 2020, the federal Families First Coronavirus Response Act (H.R. 6201; Pub. Law 116-127) (the "FFCRA") went into effect. The FFCRA gives states emergency flexibility to temporarily modify unemployment insurance ("UI") law and policies for employer experience rating as needed to prevent the spread of the COVID-19 pandemic without regard to the conformity provisions of section 303 of the Social Security Act and section 3304 of the Internal Revenue Code of 1986.

On June 26, 2020, Governor Andrew M. Cuomo issued Executive Order No. 202.45, as extended, suspending and modifying paragraph (e) of subdivision 1 of Section 581 of the Labor Law, to the extent necessary to authorize the Commissioner of Labor to issue a finding related to experience rating charges as permitted by the FFCRA and incurred beginning with the benefit week starting March 9, 2020.

The COVID-19 pandemic has led to an unprecedented number of UI claims throughout New York. Without this Order, UI claims will impact employer accounts as UI benefits are paid to claimants during the COVID-19 pandemic.

Now, in accordance with federal and state law and my authority under Executive Order No. 202.45, as extended, by this Order I hereby find that the employer account of an employer liable for contributions under Article 18 of the Labor Law shall not be charged for the duration of the claim for benefits paid to a claimant during the COVID-19 pandemic. Such charges shall be made to the general account. The provisions of this Order apply to 100% of benefits attributable to employers liable for contributions and to 50% of benefits attributable to employers liable for payments in lieu of contributions. Any charges covered by this order and previously applied to an employer's account are canceled by this order and shall instead be applied to the general account. This finding shall not apply to any employer if applying such finding fails to meet the requirements of the Federal Unemployment Tax Act, as determined by the Commissioner of Labor or the United States Secretary of Labor, unless and until the determination is set aside by a court of competent jurisdiction.

This Order is hereby filed with the Secretary of the Department, to be effective immediately and retroactively to March 9, 2020. I shall revoke and rescind this Order at the expiration of the state disaster emergency declared by Executive Order 202 or when the emergency flexibility granted by the FFCRA expires, whichever occurs first. However, nothing contained in this Order prevents me from revoking and rescinding, or amending, this Order sooner at my discretion.

Roberta Reardon

Dated: January 14, 2021
New York, NY