

# CLIENT NEWS BRIEF

## New Risks in the New Year: Use Caution with “Agreement Not to Contest Unemployment Benefits” Clauses

As we enter the new calendar year, be on the alert for “do not contest” clauses included in proposed employment separation agreements. Typically, in these clauses the employer agrees not to contest an employee’s claim for unemployment insurance. Due to a recently enacted federal law, these seemingly benign provisions could potentially leave public entities on the hook for benefits paid into their unemployment tax account as well as significant fines.

The Unemployment Insurance Integrity Act (Act) originally passed Congress in 2011 and took effect in late 2013. The Act’s purpose is to protect the integrity of unemployment insurance claims, in part by requiring employers to respond to requests for information from state unemployment insurance agencies (including California’s Employment Development Department), seeking to verify employee unemployment claims. California law, enacted in response to the Act, allows for employers to lose credit for payments into their unemployment insurance account when “the employer or agent fails to respond timely or adequately in two instances relating to the individual claim for unemployment compensation benefits.” (Unemp. Ins. Code §1026.1.) Further, under California law, if the employer “willfully makes a false statement of representation or willfully fails to report a material fact concerning termination,” the employer and/or the employer’s agent can be fined between two and ten times the weekly benefit amount (up to a maximum of \$4,500). (Unemp. Ins. Code §1142, et. seq.)

So how do public entities balance their obligations under existing or potential employment separation agreements with the new legal requirements to avoid any penalties? If you have a separation agreement that contains a “do not contest” clause, you should:

- Create a clear process for staff to respond truthfully to any inquiries from the Employment Development Department (EDD).
- Update all administrators handling unemployment insurance claims on the heightened reporting requirements and remind them to always be truthful in their responses.

But what if the language in your existing separation agreement limits your ability to adequately respond to EDD inquiries? When in doubt about conflicts between adhering to contract provisions and following the law, you may wish to seek legal counsel to determine how to balance your obligations.

Going forward, if you are considering a proposed separation agreement that contains a “do not contest” clause, you should:

- Avoid blanket “Do Not Contest” clauses that do not comply with state and federal law.
- Include language in the agreement clearly stating that you will not withhold or misstate any information in response to inquiries from the EDD.

If you have any questions regarding the Unemployment Insurance Integrity Act or compliance with California Employment Development Department rules, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).

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