

Employee Benefits and Executive Compensation

Employer Responses to Unemployment Insurance Fraud



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In the midst of the COVID-19 pandemic, claims for unemployment insurance benefits have surged. However, alongside genuine claims filed with the joint state-federal Unemployment Insurance (UI) program and the Coronavirus Aid, Relief and Economic Security (CARES) Act, fraudulent claims for unemployment benefits have skyrocketed.^[1] Companies throughout the United States have reported an unusual uptick in their receipt of fraudulent unemployment benefits forms or notices of claims for unemployment benefits, many of them implicating senior-level management and employees who remain employed.

This alert summarizes general actions that an employer can consider taking upon receipt of a fraudulent unemployment benefits form or notice of claim. In addition, it summarizes the available contact resources to file notice of a fraudulent claim in Illinois.

Employer Actions

Upon receipt of a fraudulent unemployment claim, an employer may consider the following steps:

- *Confirm the Employee's Status:* This one may be obvious, but upon receipt of a claim for unemployment, an employer should first confirm whether the employee is still working for the employer. If the employee is still working for the employer, an employer should ask the employee whether they filed the unemployment claim.
- *Follow the Applicable Procedures to Dispute the Claim:* If the employee did not file the claim, the employer should follow the instructions on the form to dispute the claim. This may include returning the form with notification that the employee remains employed.
- *Communicate with the Employee:* The employer may want to alert the employee that it received notice of a fraudulent claim for unemployment benefits in the employee's name. The employer can provide recommendations to the employee as to steps the employee can take to secure their identity, including filing an identity theft report with the Federal Trade Commission and reviewing their credit report. It is also important that an employer caution the employee not to use the funds that they may receive from the fraudulent claim.
- *Do Some Diligence:* Any time an employer is presented with a case of potential identity theft related to an employee, the employer would serve itself well to check with its IT team and make sure that there has not been any unusual activity on its systems, which could be indicative of a data incident. Ruling out a data compromise – or at least being comfortable that there is no ongoing data compromise – is a critical step for employers in evaluating any potential legal obligations it may have.
- *Maintain Records:* An employer should maintain copies of all communications to and from the state unemployment benefits agency for the company's records and the affected employee's file.

- *Monitor Unemployment Claims:* If a process is not in place, an employer may consider establishing a process to monitor unemployment charge reports, including a process for identifying potentially fraudulent unemployment benefits claims.
- *Notify the State:* Upon confirmation of a fraudulently filed claim, an employer should contact the applicable state department of employment security or unemployment benefits agency for instructions on how to report the fraud. Each state will have a unique procedure for reporting fraudulent claims for unemployment insurance benefits and the DOL has provided a list of state-specific contacts on its [website](#). A step-by-step example of how to submit a claim with the Illinois Department of Employment Security follows.

Reporting a Fraudulent Claim in Illinois

Employers that are located in Illinois can report a fraudulent claim to the Illinois Department of Employment Security (IDES). IDES recently sent a notification to some employers and has updated its [website](#) with details about how to report a fraudulent claim. Employers can notify the IDES by email, phone, and/or online form.

1. Email

When an employer receives a fraudulent notice, the employer may report the fraud via email. To do so, document the claimant's first name and last name, the employer's name, and the claim ID on a spreadsheet. The spreadsheet should be emailed to IDES personnel in the unit working on allegations of fraudulent claims. The employer should complete this procedure promptly, ideally on the same day that a notice of claim is received.

2. Phone

The IDES can be reached by phone at 1-800-814-0513. When prompted, Select 1, and then Select 5 to make a report with the department. Employees may also contact IDES to report the fraud.

If necessary, the IDES advises that affected employees and employers may also contact the Illinois Attorney General's Identity Theft Hotline (1-866-999-5630).

3. Online Form

The IDES has also developed an online [form](#) for fraudulent claims. This form can be used by an employer and/or an affected employee. To complete the form, an employer should first select "Report UI Fraud / Identity Theft" in the drop-down menu. Then, complete the required fields, including a narrative explaining the fraudulent claim received by the employer. The IDES advises users of the form not to include social security numbers or personally identifiable information.

If your business receives notice of a claim for unemployment insurance benefits that is fraudulent, there are ways to get ahead of the issue. Reach out to your Jenner & Block contact if you have questions about fraudulent claims or need assistance reporting the fraudulent claims.

Conscious of the human, operational and financial strain that coronavirus is placing on businesses and organizations worldwide, Jenner & Block has assembled a multi-disciplinary Task Force to support clients as they navigate the legal and strategic challenges of the COVID-19 / Coronavirus situation.

For additional information and materials, please visit our [COVID-19 / Coronavirus Resource Center](#).

[Click here to visit our COVID-19 / Coronavirus Resource Center](#)

[1] Fraudulent activity is so great that the Department of Labor (DOL) recently announced \$100 million in funding to thwart fraudulent claims and collect monies paid in error under the UI program and CARES Act. See <https://www.dol.gov/newsroom/releases/eta/eta20200901>.

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