

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210



March 7, 2014

Mr. Dale R. Folwell
Assistant Secretary
Division of Employment Security
North Carolina Department of Commerce
P.O. Box 25903
Raleigh, NC 27611

Dear Assistant Secretary Folwell:

This letter is a follow-up to our phone call earlier today which was prompted by our having learned that the North Carolina Division of Employment Security (DES) has been selling notices of unemployment compensation (UC) appeals hearings to law firms. The notices being sold are for hearings scheduled in response to a claimant or an employer filing an appeal of an unemployment claim decision. This practice constitutes a failure to comply substantially with Federal law, and could ultimately result in a discontinuation of payments under the North Carolina Title III administration grant as provided for in section 303(b) of the Social Security Act (SSA), if not corrected. A detailed discussion follows.

As a “method of administration” required by section 303(a)(1), SSA, state laws must include provision for “maintaining the confidentiality of any UC information which reveals the name or any identifying particular about any individual or any past or present employing unit, or which could foreseeably be combined with other publicly available information to reveal any such particulars”. State laws must also include provisions for barring disclosure of confidential UC information, unless the disclosure is permitted or required as provided in the regulation. See 20 CFR 603.4(b). Section 603.2(a)(1) [20 CFR 603.2(a)(1)] includes in the definition of claim information: information on whether an individual has applied for UC; the individual’s address; and “other information contained in the records of the State UC agency that is needed by the requesting agency to verify eligibility for, and the amount of, benefits.”

Thus, information that an individual has filed a claim is confidential, and disclosing that an individual or an employer is a party to an appeals hearing violates the confidentiality provisions of Federal law. In addition, the notices of appeals hearings that DES is selling to attorneys contain information about the statutory basis for the claimant’s eligibility or ineligibility, and thus constitute a summary of “information contained in the records . . . to verify eligibility for” benefits.

Section 603.5(b) permits the “disclosure of appeals records and decisions, and precedential determinations on coverage of employers, employment, and wages . . . provided all social security account numbers have been removed and such disclosure is otherwise consistent with Federal and State law.” We interpret this provision to mean that only final decisions may be disclosed, and only if state and federal law provides that these final decisions are part of the public record.

Thus, even if state law were to provide for DES's current practice of selling notices of appeals hearings, such activities violate Federal law, since the appeals decisions are not final.

North Carolina law, at G.S. 96-4(x)(5), provides that DES may disclose "information from the records of a proceeding compiled for the purpose of resolving issues raised pursuant to the Employment Security Law." Section 603.6(a) [20 CFR 603.6(a)] requires states to disclose information about a claim for purposes of resolving the case; however, that section permits disclosure only to the claimant and the employer involved in that case. Thus, the North Carolina provision at G.S. 96-4(x)(5), when read in conjunction with section 603.6(a), may reasonably be interpreted to permit DES to disclose information only to claimants or employers who are a party to a claim for unemployment benefits, but not to third parties.

We note that North Carolina law, at G.S. 96-4(x), requires compliance with 20 CFR Part 603, and provides penalties for unauthorized disclosure or improper use of confidential UC information. Thus, state law conforms to Federal requirements. However, by disclosing confidential claim information to third parties, North Carolina fails to comply substantially with the requirements of Federal law, as required by section 303(b)(2), SSA. As noted above, failure to comply substantially with any provision in section 303(a), SSA, can ultimately result in compliance proceedings and the suspension of further payments under the state's Title III grant until the Secretary of Labor is satisfied of compliance. See also section 603.12, which outlines the ways in which the requirements of the confidentiality regulation are enforced.

Therefore, DES must immediately cease the practice of selling or providing notices of appeals hearings to attorneys who do not already represent a claimant or an employer, comply with the provisions of state and Federal laws on confidentiality of UC information, and provide assurances that the practice has stopped and will not be resumed. In addition, we strongly recommend that DES consider notifying the claimants and employers whose personal information was disclosed. See Training and Employment Guidance Letter No. 39-11, attached, for requirements that grantees protect the confidentiality of information in their records.

Please contact Randy Fadler, your Regional Office UI Legislative Specialist, at (404) 302-5360 or fadler.randy@dol.gov should you have questions regarding this letter.

Sincerely,



Gay M. Gilbert
Administrator
Office of Unemployment Insurance

cc: Les Range
Regional Administrator
Atlanta