

## **CHAPTER 57 UNEMPLOYMENT COMPENSATION CREDIT**

### **57.01 OVERVIEW**

In 1993, the Act 44 Amendments to the Pennsylvania Workers' Compensation Act allowed a remedy to offset Workers' Compensation indemnity wage loss payments by the amount of Unemployment Benefits the disabled worker, actually received during concurrent time frames.

This amendment applied to any workers' compensation case with a date of injury on or after August 31, 1993.

Prior to Act 44, there was no credit for the receipt of unemployment compensation benefits, except in occupational disease cases.

### **57.02 STATUTORY LANGUAGE**

Section 204 (a) ... that if the employe **receives** unemployment compensation benefits, such amount or amounts so received shall be credited as against the amount of the award made under provisions of sections 108 and 306 except for benefits payable under section 306 (c) or 307.

Section 204 (c) the employe is required to report regularly to the insurer the receipt of **unemployment compensation benefits**, wages received in employment or self-employment, benefits commonly characterized as "old age" benefits under the Social Security Act, severance benefits and pension benefits, which post-date the compensable injury under this act, subject to the fraud provisions of Article XI.

### **57.03 LIMITATIONS UPON ASSERTION OF THE UC CREDIT**

[1] This offset does not apply to death benefits paid pursuant to section 307

[2] This offset does not apply to "specific loss" or disfigurement benefits paid pursuant to section 306 (c).

[3] This offset only applies to cases with an injury sustained on or after August 31, 1993. See: Lykins v. WCAB (New Castle Foundry) (Pa. 1998).

[4] As this credit applies to the amount "received" by claimant, there is no credit if the employee does not apply or does not receive UC benefits.

See: regulation 123.6 (b) for statutory support for this limitation

[5] As the credit is for the amount “received” the credit is for the “net” amount that is actually received by claimant after any withholding of taxes.

See: regulation 125.5 (b).

(a) See: also Philadelphia Gas Works v. WCAB (Amodei) (Pa. Cmwlth. 2009), An appellate decision which addressed a pension offset question, but interpreted the statutory language at section 204(a) and regulations to authorize a “**net**” offset or credit.

(b) This decision stands in contrast to the prior decision at Ferrero v. WCAB (CH&D Enterprises) (Pa. Cmwlth 1998) which ruled that the offset was for the “**gross**” amount of UC benefits awarded. The Ferrero decision was published about 2 weeks after the publication of the regulations, thus the regulations were not considered in that analysis and decision.

[6] The offset is applies only to the UC benefits which the employe receives **and** are attributable to the **same time period** in which an employe also receives workers’ compensation benefits.

See: regulation 123.6 (a).

[7] There is no offset available against **Trade Readjustment Act (TRA)** benefits which an employe receives and are attributed to the same time period.

See: Deitrich Industries v. WCAB (Shank) (Pa. Cmwlth. 1999).

#### **57.04 PROCEDURE FOR ASSERTION OF THE UC OFFSET**

The Regulations at 123.1, et. seq. provide instruction for the mechanism by which one properly asserts the UC offset against workers’ compensation benefits.

[1] Employees “shall” report to the insurer amounts received in UC, Pension, Severance or Social Security benefits via preparation of the LIBC 756 “Employee’s Report of Benefits” form.

Regulation 123.3 (a).

[2] The LIBC 756 form is to be completed by employee and returned to the insurer within 30 days of employee’s receipt of any of these specified benefits.

Regulation 123.3 (b).

[3] After receipt of the 756 form, the insurer may offset workers' compensation benefits via preparation and filing of LIBC 761 "Notice of Workers' Compensation Benefit Offset".

[4] **At least 20 days prior to taking the offset**, the insurer "shall" notify the employee that workers' compensation benefits will be offset.  
Regulation 123.4 (b).

[5] Employer shall provide a copy of the LIBC 761 form to; (a) the employee, (b) the employee's legal counsel, if known and (c) the Department of Labor and Industry.  
Regulation 123.4 (d)

[6] The employee may challenge the offset via the filing of a Petition to Review Offset LIBC 378 with the Bureau of Workers' Compensation.  
Regulation 123.4 (e)

#### **57.05 MANDATORY NATURE OF UC CREDIT**

The Employer cannot "inadvertently" waive the unemployment benefit credit, regardless of whether the employer has requested the offset. The WCJ is required by section 204 (a) to reduce an award of workers' compensation benefits, by the amount of unemployment compensation benefits received by the employee.

See: Costa v. WCAB (Carlise Corp.) (Pa. Cmwlth. 2008).

#### **57.06 EMPLOYEE REPAYMENT OF UC BENEFITS – REVERSAL OF CREDIT**

It is important to note, that in circumstances where the employee receives UC benefits and those benefits are asserted as an offset to workers' compensation benefit payments, when the **employee is required to repay** the UC benefits, based upon a UC determination of ineligibility, the insurer "shall" repay the employee for the amounts previously offset from the workers' compensation benefits.

The employee may request that the insurer remit repayment directly to the Bureau of Unemployment Compensation Benefits and Allowances (BUCBA).

See: regulation 123.6 (c) (1) and (2).