




COMMONWEALTH of VIRGINIA
Virginia Employment Commission

Ellen Marie Hess
Commissioner

July 10, 2017

Post Office Box 1358
703 East Main Street
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TO: The Honorable Terrence R. McAuliffe, Governor
The Virginia General Assembly

FROM: Ellen Marie Hess, Commissioner 

RE: Biennial Report on the Implementation of §60.2-528.1 of the *Code of Virginia*

EXECUTIVE SUMMARY

Number of employers deemed to have established a pattern of failing to respond timely or adequately to written requests for information: 24

The amount of benefit charges not relieved from employers' accounts as a result of the implementation of Section 60.2-528.1: \$137,232.60

The assessment of civil penalties pursuant to §60.2-528.1: 50 civil penalties of \$75 each were assessed for a total of \$3,750.

The effectiveness of the section in:

- **Reducing the number and amount of erroneous payments made to claimants**
Since July 1, 2015, 459 claimants were determined erroneously paid \$1,779,655.26 where employers violated §60.2-528.1. We believe that the penalty provides a strong incentive for employers to respond to our request for information. This information allows us to make more timely and better claims determinations. In turn, this will reduce the number and dollar value of erroneous overpayments.
- **Increasing the percentage of employers that provide timely and adequate responses to requests for information relating to claims for compensation**
Prior to enactment of this statute, "pattern" was not defined in Title 60.2 and the agency did not track violations in the manner as prescribed therein. We have noted a significant increase in the number of first time occurrences per employer, but repeated violations have remained the same. In the last 2 years, we have issued 436 initial notifications. Of those, 50 employers were assessed a penalty, and 11 of those 50 employers were not relieved of benefit charges.

- **The effect thereof on the solvency level of the Unemployment Trust Fund**
The effect on the solvency of the Unemployment Trust Fund has been negligible.
- **The average state unemployment tax per employee**
The average tax paid per employee for 10/01/15 - 9/30/17 will not be available until the year ending 9/30/2017.

The burden of complying with and administering the section

In the last 2 years, the agency has incurred the following administrative costs in implementing this statute:

- Postage for 696 letters @ \$.40/ltr = \$278.40
- Paper/envelopes for 696 envelopes @ \$.29/envelope = \$194.88
- 20% of 1 Claims Examiner position to maintain spreadsheet and create letters = \$20,130
- From July 2015 through May 2017, there were 19,544 first level separation decisions and 2,858 commission appeals separation decisions. The lower level decisions require ¾ of an hour for 528.1 and the higher level decisions require ¼ of an hour.
- The simple average of the two hourly rates of ad law staff who 'touch' the appeal is \$22.54. If that rate is multiplied by the 22,402 total separation decisions, the result is \$504,941. [22,402 x \$22.54 = \$504,941.08]

Recommendations for legislative changes that would ease such burdens and increase this section's effectiveness:

While this legislation was enacted to battle improper payments triggered by an employer's failure to accurately respond to the Commission's request for information about a claim, it has had unintended consequences. Namely, it has increased the Administrative Law Division's time spent processing appeals in cases where the 528.1 issue is triggered. Additionally, UI grant funding is directly tied to the Minutes Per Unit (MPU) that a state spends handling a claim from start to finish, as compared to comparably sized states, such that this legislation could negatively impact Virginia's UI funding by increasing its average MPU, as compared to other states in the large state category that have no such mandate.

For example, these tracking and reporting requirements have resulted in both First Level Appeals and Commission Appeals devoting approximately an extra hour to this issue in affected cases – 45 minutes for First Level Appeals and 15 minutes for Commission Appeals. This includes all staff time devoted to dealing with the 528.1 issue in employers' appeals from the Deputy's determination in appeals where this issue is triggered. The additional issue results in the Appeals and Special Examiners having to devote time to an extra case issue and has negatively impacted these hearing officers' ability to devote the usual and customary amount of hearing and review time to adjudicating substantive case issue(s) in these appeals or cases. This has resulted in a slight decline in the overall quality of analysis that may be devoted to cases at the First Level Appeals' level of review in which the 528.12 issue is present, which must then be remedied by Commission Appeals in any appeals of these cases.

In this enactment clause, the General Assembly requested information from the agency for legislative changes that would ease burdens imposed on the agency by the legislation and increase the section's effectiveness. This legislation has increased the MPU and associated costs of our Administrative Law Division's adjudicating this 528.1 issue in appeals from the Deputy's determinations in affected cases, without providing the agency with supplemental funds to absorb the additional claims adjudication mandate. Again, it has a negative impact on our UI grant funding as it increases our MPU in appeals' cases involving this 528.1 issue. Supplemental funding to cover the additional administrative costs associated with adjudicating these appeals for purposes of tracking and reporting the number of employers that run afoul of this legislation's requirements may be in order to ease these increased, unintended burdens placed on the agency's Administrative Law Division and its UI grant funding, and the overall, negative impact it has had on the agency's claims adjudication process in these 528.1 appeals or cases.

This executive summary represents the implementation of 528.1 for the biennium July 1, 2015 through June 30, 2017. The Virginia Employment Commission will not submit a report to the Governor and the General Assembly.