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Department
of Labor

DISMISSAL OR SEVERANCE PAY AND YOUR UNEMPLOYMENT INSURANCE BENEFIT

This fact sheet tells you how dismissal or severance pay may affect your eligibility to receive Unemployment Insurance (UI) benefits.

WHAT IS CONSIDERED DISMISSAL OR SEVERANCE PAY?

UI law defines dismissal pay as payments made by an employer to an employee due to separation from employment. Severance pay is considered dismissal pay. It may be paid as a series of payments or as a lump sum.

Dismissal/severance pay does not include payments for pension, retirement, accrued leave and health insurance or payments for supplemental unemployment benefits.

WARN pay – payments made under the Worker Adjustment and Retraining Notification Act (Article 25-A of the Labor Law) – is not considered dismissal/severance pay. The WARN Act states that UI benefits may not be denied or reduced because of payments received under the WARN Act.

IS DISMISSAL/SEVERANCE PAID IN A LUMP SUM TREATED DIFFERENTLY FROM PAYMENTS MADE OVER A PERIOD OF TIME?

No. Any dismissal/severance pay you receive within 30 days of your last day of employment, whether as a lump sum or in payments made to you over a period of time, may affect your benefits under UI reform.

Usually, the time period covered by the lump sum payment will be clearly spelled out in your dismissal/severance pay agreement or plan. If it is not, the Department of Labor's Telephone Claims Center will determine the time period that the lump sum payment covers. They will look at your actual gross average weekly pay or the gross average weekly pay of your highest-earning calendar quarter in your base period* to determine the length of time covered by the lump sum dismissal/severance payment.

IF I RECEIVE DISMISSAL/SEVERANCE PAY, HOW DOES IT AFFECT MY BENEFITS?

If you receive dismissal/severance pay within 30 days of your last day of employment, you will not be eligible for benefits immediately if:

- Your weekly dismissal/severance payments are greater than the maximum weekly UI benefit rate
- Or
- Your employer gave you a lump sum payment and the weekly pro-rated amount of the payment is greater than the maximum weekly UI benefit rate

You may be eligible to collect benefits if:

- The weekly amount of dismissal/severance pay is the same as or less than the maximum weekly UI benefit rate
- Or
- The dismissal/severance pay is stopped and you have enough earnings in the base period* to establish a claim

If you receive your first dismissal/severance payment more than 30 days after the last day you worked, you will be able to receive UI benefits if you meet the other eligibility requirements.

If you are not sure whether or not you will receive dismissal/severance pay, you should file for benefits and let us determine if you are eligible. However, you must call the Telephone Claims Center right away if you receive a dismissal/severance payment within 30 days of your last day of employment. If you don't call right away, you may receive an overpayment of benefits which you will need to pay back. You also may be subject to penalties.

HOW DO I KNOW WHAT MY LAST DAY OF EMPLOYMENT WAS FOR THE PURPOSES OF DISMISSAL/SEVERANCE PAY?

Your last day of employment is the last day you were actually working or were on paid leave, such as scheduled vacation or medical leave.

WILL I BE ELIGIBLE FOR TRADE ADJUSTMENT ASSISTANCE (TAA) OR TRADE READJUSTMENT ALLOWANCES (TRA) IF I RECEIVE DISMISSAL/SEVERANCE PAY?

Receiving severance pay does not affect your eligibility for TAA. However, it will affect your eligibility for receiving TRA. TRA is a weekly allowance payable after your eligibility for UI benefits has been exhausted. In order to be eligible for TRA, you must be eligible for UI benefits first. This means you will not be eligible for TRA if receiving dismissal/severance pay has made you ineligible for UI benefits.

Please note: Although you may not initially be eligible for UI benefits while you are receiving dismissal/severance pay, you may become eligible for unemployment benefits when your dismissal/severance payments end.

CAN DISMISSAL/SEVERANCE PAY BE USED TO ESTABLISH A NEW CLAIM AFTER THE DISMISSAL/SEVERANCE PAY PERIOD ENDS?

No. Only wages or earnings for actual employment during the base period* of a new claim can be used to establish a new claim.

For more information about dismissal/severance pay, please check the Frequently Asked Questions on our website at www.labor.ny.gov/ui/claimantinfo/reform-faq.shtm.

*Base Period: Four completed calendar quarters in which you must have been paid a minimum amount of wages to qualify for UI benefits.