

Unemployment Insurance and Workers' Compensation Programs

Vermont's 2010 Legislative Changes

www.labor.vermont.gov



November 1, 2010

Agenda

- Applicable Acts
- Unemployment Insurance (UI) Program
- WorkersqCompensation (WC) Program
- Program Integrity
- Keeping UI Costs Down
- Keeping WC Costs Down
- Resources

Applicable Acts

- Act 142 (H.647)
 - An Act Relating to Misclassification of Employees to Lower Premiums for Workers Compensation and Unemployment Compensation
- Act 124 (S.290)
 - An Act Relating to Restoring Solvency to the Unemployment Trust Fund
- Act 146 (H.792)
 - An Act Relating to Implementation of Challenges for Change
- Act 118 (S.182)
 - An Act Relating to Determining Unemployment Compensation Experience Rating for Successor Businesses
- Link for all acts is provided at end of presentation

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Here are the Acts involved.

These acts are a compromise of impacts to employers and the unemployed

The legislature worked hard and came through with result that Vermont AGAIN is in the forefront of the nation in responsible legislative action to protect Vermont's future

Be watchful that future legislation does not undermine these necessary acts as passed.

Unemployment Insurance (UI) Program

- Wealth of information on the web related to:
 - Understanding the program
 - What creates employer liability for reporting
 - ABC+test . determines whether wages are reportable
 - Employer and claimant responsibilities
 - Background information on Trust Fund reform
 - How we got here
 - How does Vermont compare to other states
 - More details on 2010 changes

Unemployment Insurance Program

→ Reform goals

- Return the Trust Fund to the black as soon as feasible.
- Return the fund to adequate level before the next recession to avoid falling back into debt.
- Maintain benefits at or above national averages.
- Keep the taxable wage base as low as possible.
- Minimize borrowing, which
 - minimizes interest expenses and FUTA tax costs.

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Interest can not be paid from employer UI tax money. It must come out of a State's general fund or from some other source.

Right now the federal government has given a waiver of the interest thru the end of this year, 12/31/10.

FUTA = Federal Unemployment Tax Act

After 1/1/11 employers will face a loss of FUTA credit until Vermont's trust fund is solvent and all borrowed money and interest has been paid.

Unemployment Insurance Program

→ Employer Impacts

- Taxable wage base – Act 124 (S.290)
 - The taxable wage base is the basis used for figuring an employer's UI taxes.
- *Effective January 1, 2011*
 - Taxable wage base will increase from the current \$10,000 to \$13,000.
- *Effective January 1, 2012*
 - Taxable wage base will become \$16,000.

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From the early 80s to January 2010, Vermont's taxable wage base remained at \$8,000.

Many would argue the reason our trust fund is insolvent is because employers have not been paying their fair share during this time.

While there is some merit to this, the bigger problem lies in a quicker than expected recession, yearly increases to the maximum weekly benefit amount, and a failure to index or tie the taxable wage base to the State's wage growth.

Unemployment Insurance Program

→ Employer Impacts

- Taxable wage base (continued)
- Effective when Trust Fund is solvent (balance greater than zero and loans repaid)
 - Taxable wage base will index upward annually by overall wage growth after the Trust Fund becomes solvent, **projected** to be 2015.
- Effective upon return to Schedule III and I
 - Taxable wage base will drop by \$2,000 January 1st upon return to tax rate schedule III and another \$2,000 at schedule I.

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This is a key employer component in the reform measures taken to balance employer vs. claimant impacts to maintain trust fund solvency

Unemployment Insurance Program

→ Employer Impacts

- Fines and penalties - Acts 124 and 142 (S.290 and H.647)
- *Effective July 1, 2010* - three areas of change
 - **Penalties associated with late requests for information** was increased from \$35 to \$100
 - Requests for separation and/or wage information (following an unemployment claim being filed)
 - Quarterly Wage and Contribution Reports
 - **Benefits paid improperly** based on late report
 - Employer's account will remain charged
 - **Misclassification of a worker** (failure to report when required)
 - Up to \$5,000 penalty, per worker, per report
 - VDOL conducting public education

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Penalties have also not increased since the early 80s.

Charging of an employer's account for benefits paid improperly is designed to tie a financial impact on employers whose failure to respond to requests timely result in an improper payment that would otherwise be charged to the trust fund and ultimately distributed to all employers as an unassigned cost.

Prior to this law change, taxable employer's account would be relieved of overpaid benefits regardless of when they responded.

The department continues to work on web and electronic applications to make it easier and quicker to send and receive notices of claims/charges and requests for wages and separation information.

At this time it is recommended these responses be faxed to us to speed and allow record of submission date and time

Unemployment Insurance Program

→ Employer Impacts

- Notice of Experience Rating . Act 118 (S.182)
- *Effective July 1, 2010*
 - Upon request, seller of business must disclose experience rating to potential buyer

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Department will inform accountants and lawyer groups of this change.

Law is designed to provide the potential buyer with financial information regarding the business's unemployment benefit charges and experience rating, which could impact their decision to buy a business.

While the law still prohibits the department from providing this information, it requires the seller to provide it when asked.

Unemployment Insurance Program

→ Employer Impacts

- New Hire Reporting . Act 146 (H.792)
- *Effective July 1, 2010*
 - Changes included:
 - Requirement to report within **10 days** of first date work was performed
 - Requirement to include first date of employment
 - Definition for first date of employment = first date services are performed for compensation

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This has changed from 20 to 10 days.

First date of employment is now required, but was optional field although our applications and forms have always included it.

Cross matches against wages reported and new hire reports received will be done to determine overall compliance with 10 day requirement.

Depending on outcome of such review, it's possible penalties could be imposed in the future for untimely reporting.

Unemployment Insurance Program

→ Employer Impacts

- Why is New Hire Reporting Important?
 - Prevents UI overpayments once work begins
 - Helps 1,000¢ of kids receive timely child support
 - Helps prevent fraud and improper payments in means tested programs
- New Hire Reporting reminders
 - File on-line
 - www.labor.vermont.gov
 - **Employer Applications** (left hand side of every Labor webpage)

Unemployment Insurance Program

→ Claimant Impacts

- Maximum Weekly Benefit Amount - Act 124 (S.290)
 - Remains frozen at \$425 while we are borrowing (current law)
 - Will resume increasing when the Trust Fund is solvent (balance greater than zero and loans repaid), which is **projected** to be July 2015
 - To help make up for the lost increases that would have otherwise occurred, the maximum amount will become 57% of the overall average annual wage upon return to tax rate schedule III.

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This is another area to watch.

This is a key claimant component of the reform measures taken to balance employer vs. claimant impacts to maintain trust fund solvency.

Unemployment Insurance Program

→ Claimant Impacts

- Variable duration of benefits . Act 124 (S.290)
- *Effective July 1, 2011*
 - Maximum number of weeks to be claimed in a benefit year will vary
 - A claimant will be eligible for an amount equal to 26 weeks times their weekly benefit amount or 46% of the base period+wages, whichever is less.
 - Claimants who work year round and find themselves unemployed, should not be affected by this change.

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Delay in the effect date of this reform was intended to allow everyone an opportunity to plan for the reduced benefit amount, although this change is projected to have a small impact overall.

Unemployment Insurance Program

→ Employer and Claimant Impact

- Misconduct . Act 124 (S.290)
- *Effective May 24, 2010*
 - Being Fired for Misconduct
 - **Maximum disqualification** period increased from 12 to 15 week delay, after which the fired employee can still collect UI
 - Misconduct is defined as willful and culpable neglect of an employer's interest, which employer has burden to demonstrate. It is NOT a single event of showing up late, but rather repeated negative behavior after warning by the employer
 - A definition for gross misconduct has now been added to the statutes.
 - Examples include but are not limited to: theft; fraud; intoxication; intentional serious damage to property; intentional infliction of personal injury; any conduct that constitutes a felony; or repeated incidents after written warning of either of the following: unprovoked insubordination or public use of profanity

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If the Department finds an individual has been separated for simple or gross misconduct, benefits are denied and the base period employer's account is relieved of liability.

Further information regarding dismissing an employee for misconduct (for UI purposes) is provided on our website and included in handouts.

<http://labor.vermont.gov/Default.aspx?tabid=1394>

Definition for gross misconduct is virtually the same as past practice and case law; but is now part of statutes.

Many employers did not understand that benefits were paid after the disqualification, which some might view as a delay. On the other hand, there were many who testified that VDOL disqualified inappropriately, pointing to the % of overturned appeals. It was and still remains VDOL's position that most of the overturned appeals are traceable to employers not providing complete information at the first level of review. In the future, an untimely response that leads to improper allowance of benefits will lead to employer's accounts not being relieved until the overpayment is recovered.

Unemployment Insurance Program

→ Employer and Claimant Impact

- Misconduct . Act 124 (S.290)
- *Effective for new claims filed after July 1, 2011*
 - Being Fired for Misconduct
 - Maximum number of weeks capped, not to exceed 23 full weeks
 - Being Fired for gross misconduct
 - Use of wages prohibited for calculation of weekly benefit amount.
- Information related to misconduct and UI
 - Documentation is often the key to supporting that the dismissal was due to misconduct (for UI purposes)
 - Further information is available on VDOL's web site at www.labor.vermont.gov

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In misconduct situations it is employer's burden to prove.

Simple Misconduct (disqualification) adjudicated will result in the employer's account being relieved, except when untimely response results in an overpayment.

Gross Misconduct (disqualification) adjudicated as such will result in the corresponding wages being deleted from the claim, resulting in claimant's WBA recalculated, and with no wages by the employer involved, no charges to that employer, except when untimely response results in an overpayment.

Unemployment Insurance Program

→ Claimant Impacts

- **Waiting period week . Act 124 (S.290)**
- ***Effective July 1, 2012***
 - All new claims effective July 1, 2012 and subsequent will require, an otherwise payable claim, to become a ~~%~~waiting period+week . meaning a person claiming UI benefits will have to wait one week after they have separated that will not be paid.
 - Will still get full maximum duration, just delayed by one week
 - Claimants must file for, but will not be paid for the waiting period claim, unless such week follows weeks disqualified as a result of receiving severance pay
 - Waiting periods sunset effective July 1, 2017, or when the Trust Fund balance is greater than zero, whichever is later.

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Most states require the claimant to file a waiting period claim.

KEEP IN MIND . maximum duration will not always be 26 weeks ÷ . (variable duration and misconduct findings)

This is another key claimant component of the reform measures taken to balance employer vs. claimant impacts to maintain trust fund solvency.

This reform is the bulk of saving in benefits. Be watchful of any efforts to repeal this if you are interested in maintaining a balanced approach to creating trust fund solvency.

Unemployment Insurance Program

→ Claimant Impacts

- Severance pay . Act 124 (S.290)
- *Effective for new claims filed after July 1, 2011*
 - Claimant who received severance pay upon separation will be disqualified, meaning they will not be able to receive an unemployment benefit for the same time they have received severance pay
 - However, claimants will still be able to collect their maximum duration of benefits, but only after the severance is used.

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Currently and until new claims filed after July 1, 2011 an employer may request severance to be non-disqualifying, however, claims filed after July 1, 2011

Unemployment Insurance Program

→ Claimant Impacts

- Exempted part-time earnings . Act 124 (S.290)
- *Effective July 1, 2012*
 - All new claims effective July 1, 2012 and subsequent will have new system to exempt \$40.00 or 30% of gross wages earned (whichever is greater).
 - Advantages include:
 - smoother transition to full-time employment;
 - removing the existing cliff; and
 - greater incentive for claimant to accept full-time work rather than limiting to part-time

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One of the reasons this change was made was that we heard from many employers that claimants were not accepting and/or wanting more hours as they could gross more \$ overall (UI and paycheck) from limiting hours.

This change ties the amount of exempted earnings to the current gross wages being made rather than the WBA, which is calculated on past wages.

Unemployment Insurance Program

→ Claimant Impacts

■ New Disregard Earnings Example:

Claimant works 20 hours at \$12.00 per hour, earning a total of \$240.00.

If no work was performed, worker would receive UI amount of \$409.00.

Current disregarded amount:			New disregarded amount:				
30% of WBA = \$122.70			<i>30% of gross wages = \$72.00</i>				
Current Income			Amt if clt worked full time	New Calculations			Amt if clt worked full time
Wages	UI amount	Total Income		Wages	UI amount	Total Income	
\$240.00	\$292.00	\$532.00	\$480.00	\$240.00	\$241.00	\$481.00	\$480.00

Unemployment Insurance Program

→ Claimant Impacts

- Enhanced Assistance . Act 124 (S.290)
- *Effective July 1, 2010*
 - Put into law VDOL's enhanced efforts to help assist unemployment claimants in getting back to work, including making these services a priority in regional offices
 - Re-employment services in regional offices will continue to utilize available grants or other resources
 - Claimants required to participate in re-employment services when directed.

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This is not new, but instead our practice simply put into law.

Workers' Compensation (WC) Program

- Wealth of information on the web related to:
 - Understanding the program
 - What creates employer liability for coverage
 - Best practices
 - Independent contractor versus employee
 - Navigating the WorkersComp system
 - What is a self-insured employer
 - Reporting fraud

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www.labor.vermont.gov

Workers' Compensation Program

→ Handling of Workers' Comp Claims

- Three sections directly affect the handling of Vermont Workers' Compensation claims - Act 142 (H.647)
 1. Legal requirements to discontinue a benefit are CHANGED
 - *Section 14 - Effective June 1, 2010*
 2. New weekly payment requirements
 - *Section 15 - Effective July 1, 2010*
 3. Claimants may videotape insurer requested medical exams
 - *Section 16 - Effective July 1, 2010*

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Workersø Compensation Program

→ Handling of Workersø Comp Claims

1. Legal requirements to discontinue a benefit are CHANGED

A. Vocational Rehabilitation Requirement

- If a workersø compensation insurer wishes to stop payments (file a Form 27) to a worker who has been out of work for 90 days, the adjuster must verify that the worker has been offered vocational rehabilitation screening and vocational rehabilitation services, if the worker is eligible for such services. Failure to do so will prevent the discontinuance from taking effect and the insurer will have to continue providing weekly payment.

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Workers' Compensation Program

→ Handling of Workers' Comp Claims

1. Legal requirements to discontinue a benefit are CHANGED (continued)
 - B. Evidence Submission Requirement
 - When a discontinuance is filed (Form 27) a workers' compensation insurer is now required to submit all relevant evidence in its possession, including evidence that does not support the discontinuance, with the discontinuance (Form 27) unless that evidence has already been submitted to the department and either to the claimant or claimant's attorney.

Workers' Compensation Program

→ Handling of Workers' Comp Claims

1. Legal requirements to discontinue a benefit are CHANGED (continued)
 - c. A new standard of review . preponderance of evidence
 - The legal standard used to evaluate the evidence supporting a discontinuance has been changed. A Workers' Compensation Specialist is required to review all evidence in the file, whether submitted by claimant or the insurer, and decide whether a preponderance of all evidence supports the discontinuance. The legal standard is much harder for an insurer to meet, as compared to the former reasonableness standard.

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Workers' Compensation Program

→ Handling of Workers' Comp Claims

1. Legal requirements to discontinue a benefit are CHANGED (continued)
 - D. Claimant's right to submit additional new evidence
 - Even if the discontinuance is approved, a claimant may request that benefits be reinstated prior to a formal hearing providing additional new evidence to the department that establishes that a preponderance of all evidence now supports the claim.

Workersø Compensation Program

→ Handling of Workersø Comp Claims

2. New weekly payment requirements

A. Specify mailing date

- A workersø compensation insurer is now REQUIRED to specify the **weekday** on which a weekly workersø compensation benefit will be **mailed** to the claimant or electronically deposited in claimant's account and notify the claimant and the department of that day.

B. Penalties if not mailed on date

- If weekly payment is not mailed or deposited on the specified date, the insurer owes the claimant an additional \$10.00, or 5% of the weekly amount, whichever is GREATER.

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Workers' Compensation Program

→ Handling of Workers' Comp Claims

2. New weekly payment requirements (continued)

- c. Affidavit as to actual date mailed required if there is a dispute.
 - If there is a dispute, the adjuster or other responsible party employed by the insurer, must be able to provide a sworn affidavit as to the date the money was mailed or deposited.
 - Note: elsewhere in Act 142 (H.647) the Legislature increased the penalty for a false statement up to \$20,000.

Workers' Compensation Program

→ Handling of Workers' Comp Claims

3. Claimants may videotape insurer requested medical exams
 - The medical examiner may audiotape the examination, but must obtain the claimant's permission before videotaping the examination.

Workers' Compensation Program

→ Investigators

- Additional Investigator - Act 142 (H.647)
- *Effective July 1, 2010* . Section 2
 - Mandated a 4th investigator to assist with combating misclassification
 - Misclassification
 - Miscoding
 - Independent Contractor vs. Employee
 - Additional .055% was added to premium to cover 4th position
 - VDOL conducting public education

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These investigators are in addition to established UI field auditors.

Work is done cooperatively.

Workers' Compensation Program

→ Failure to Insure

- Stop work order - Act 142 (H.647)
- *Effective July 1, 2010* - Section 3
 - In place immediately until the employer has secured Workers' Compensation insurance (5-day grace period removed)
 - Delay if stop-work order would immediately threaten safety or health of public
 - Administrative penalty up to \$150 per day before stop work order and \$250 per day until you have Workers' Compensation insurance
 - Notice shall be posted

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Workers' Compensation Program

→ Failure to Insure

■ Stop work order (continued)

- Employer against whom a stop-work order has been issued is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for a period of up to three years following the date of the issuance of the stop-work order

■ Stop Work Order violation penalty

- Civil penalty not more than \$5,000 for 1st violation and not more than \$10,000 for 2nd or subsequent violation; or
- Criminal fine of not more than \$10,000 or imprisonment for not more than 30 days, or both. ³²

Workers' Compensation Program

→ False statements

- False statement - Act 142 (H.647)
- *Effective July 1, 2010* - Section 2
 - Any person who willfully makes a material false statement for either his or her benefit or to benefit another may be penalized \$20,000 (up from \$5000) in addition to losing any benefit.
 - In addition an employer who falsely represents workers as independent contractors is prohibited from contracting with the state or its subdivisions for up to 3 years.

Workers' Compensation Program

→ Successor liability

- Successor Liability - Act 142 (H.647)
- *Effective July 1, 2010* - Section 5
 - Any penalty assessed or order issued under this chapter or 8 V.S.A. § 3661 shall continue in effect against any successor employer that has one or more of the same principals or corporate officers as the employer against which the penalties were assessed or order issued and is engaged in the same or similar business.

Workers' Compensation Program

→ Unlawful Discrimination

- Unlawful Discrimination - Act 142 (H.647)
- *Effective June 1, 2010* . Sections 7 & 8
 - Public may report potential misclassification using on-line reporting form
 - The name of the individual reporting shall remain confidential
 - Employer is prohibited from retaliating or taking any negative action against an individual because the employer knows or suspects a complaint was filed

Workers' Compensation Program

→ State Contracts

- State Contracts - Act 142 (H.647)
- *Effective July 1, 2010* - Sections 5b and 17
 - The Agency of Administration shall ensure that the state and any of its subdivisions do not contract, directly or indirectly, with employers who are prohibited from contracting by the commissioner of labor pursuant to 21 V.S.A. § § 692, 708, and 1314a or the commissioner of banking, insurance, securities, and health care administration pursuant to 8 V.S.A. § 3661.
 - A current list of employers that have been prohibited from contracting with the state or any of its subdivisions shall be maintained and published on the agencies of administration and of transportation websites.

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Program Integrity

- Report fraud or potential misclassification
 - <http://labor.vermont.gov/InfoCenter/Fraud/tabid/147/Default.aspx> . **Fraud Reporting**
- Report information related to a UI claimant not looking for or accepting suitable work
 - www.labor.vermont.gov . **Forms and Publications**
 - **Unemployment Insurance – Employer forms**
 - Refused work . download form F-35
 - Work to offer . download form F-34E
- WorkersComp policy check
 - <http://labor.vermont.gov/InfoCenter/WorkersCompensationInsuranceCoverageVerification/tabid/1473/Default.aspx>

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Dept takes seriously the proper calculation of unemployment benefits and payment and uses all methods available to uncover inaccuracies and fraud.

Our WC investigators and UI auditors assist in this effort and do share information.

Please remember that unemployment or worker compensation misclassification and fraud has an impact on all employers

Monthly charge statements provides instruction on how to notify VDOL

Program Integrity

- Report %underground+or %under the table+employment
 - <http://labor.vermont.gov> . click **Fraud Reporting** under %News+
 - Source of original information will be kept confidential
- Why
 - Prevents losing state revenues
 - Undermines the growth of the economy
 - Helps maintain Unemployment Trust Fund
 - Creates equity among businesses and unemployed workers

Keeping UI Costs Down

- Keep accurate records of employment agreements, dates/details of work refusals, employee performance, dates/details of warnings and other disciplinary measures
- Provide separation information when requested, by the due dates specified
- File an appeal if you believe a determination or decision is wrong
- Notify us promptly if you have information a claimant is not available for work, not able to work, has refused work, or is employed.

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At the first sign of performance or behavior problems, DOCUMENT.

Provide information IMMEDIATELY.

Not responding to requested information will likely cost you in the long run.

UI Benefit charges WILL affect your experience rating.

Keeping UI Costs Down

- Complete audit forms promptly
- Report ALL ~~New~~ Hires+within 10 days, including the first date of employment, now required by law
- Submit quarterly wage reports timely to avoid penalties
- Pay taxes promptly to obtain maximum Federal Unemployment Tax credit
- Report all changes to your business promptly
- Encourage your workers to seek and accept part-time or temporary work during seasonal layoffs.

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If you have questions about ANY form received, call.

BOTTOM LINE . inaccurate or late responses cost EVERYONE; employers-pens and rate increases and claimants-potential overpayment.

Late state UI payments could result in thousands of dollars in lost Federal Unemployment Tax Act (FUTA) credit and the assessment of IRS penalties.

Keeping WC Costs Down

- Develop and maintain an effective safety and health program for each worksite
- Promptly report and investigate all injuries or accidents . correct problems to prevent or reduce risk of re-occurrence
- Stay in regular contact with the WC insurance adjuster handling claim

Keeping WC Costs Down

- Stay in regular contact with worker . let them know they are valued
- Develop and use an early return to work or light duty work program whenever possible
- Promptly document and alert the adjuster to any suspected fraud and report concerns and documentation to the department.

Resources

- Vermont Department of Labor's website
 - www.labor.vermont.gov
- State of Vermont Legislative Bill Tracking
 - <http://www.leg.state.vt.us/database/status/status.cfm>
- Workers' Compensation Division
 - 802-828-2286
- Unemployment Insurance Division . Employer Services
 - 802-828-4344

Questionsí

- Stephen Monahan, WorkersqComp and Safety Director
 - stephen.monahan@state.vt.us
 - 802-828-2138
- Tracy Phillips, Unemployment Insurance & Wages Director
 - tracy.phillips@state.vt.us
 - 802-828-4242
- Maria Beede, UC Programs Administrator III
 - maria.beede@state.vt.us
 - 802-828-4254
- Valerie Rickert, Acting Commissioner
 - valerie.rickert@state.vt.us
 - 802-828-4100

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