



*National Payroll Reporting Consortium*

---

PO Box 850 ★ Henrietta, NY 14467-0850 ★ [www.NPRC-Inc.org](http://www.NPRC-Inc.org)

January 7, 2011

Mr. Stan Davis, Chief  
Division of Employer Accounts  
Department of Labor and Workforce Development  
PO Box 913  
Trenton, NJ 08625-0913

*Via email: [Stanley.Davis@dol.state.nj.us](mailto:Stanley.Davis@dol.state.nj.us)*

Dear Mr. Davis,

As discussed briefly yesterday, we were somewhat surprised that your email concerning Senate Bill 1968 (dated December 08, 2010) appeared to be directed to payroll service organizations. You confirmed that your understanding of the legislation was that it included payroll service providers. We are writing to ask for clarification of the Department's intended scope in implementing SB 1968.

The National Payroll Reporting Consortium (NPRC) is a non-profit trade association whose member organizations provide payroll processing and related services, including electronic filing of quarterly UI wage and tax reports, to over 1.4 million employers nationwide, covering over one-third of the private sector work force. Payroll service providers serve an important role in our nation's tax collection system as a conduit between employers and government authorities, improving the efficiency of tax collection through electronic filing and improving compliance.

We have carefully reviewed SB 1968 and find no basis for requiring registration of payroll service providers that merely file wage and tax reports for employers. SB 1968 addressed perceived abuses by certain unemployment insurance benefits administration companies that represent employers. There is no mention in the bill of payroll service providers, and we do not believe that it was the intention of the legislature to authorize the Department to regulate such firms.

The statement of purpose from SB 1968 explained that the bill was intended *"to address certain abuses occurring in the unemployment insurance (UI) system which often result in the improper delaying or denial of UI benefits to laid off workers."*

Further, the definition of agent within the statute clearly excludes payroll service organizations that merely file quarterly wage and tax reports for employers:

*"Authorized agent" means an individual, organization or business that, for a fee, provides representation to parties in communications with, or hearings or other proceedings before, representatives of the division in connection with claims for unemployment benefits, charges or tax assessments. " (emphasis added)*

The substantive elements of SB 1968 all address UI benefits and claims administration; e.g., *"An authorized agent shall promptly notify the client of any scheduled proceedings... case preparation*



*and scheduling of witnesses... for a scheduled hearing... An authorized agent shall provide competent representation... shall explain the proceedings and prepare the case with the client and any witnesses... arrange for producing witnesses and documentary evidence at the hearing."*

However, your note was directed to payroll service organizations, whose involvement in New Jersey's unemployment insurance system is generally limited to electronically filing quarterly UI wage and tax reports to the Division of Revenue.

Section 3 (a) of the bill provides that "An authorized agent who represents parties for a fee shall not represent any party after June 30, 2011 in any procedure with the division regarding claims for unemployment benefits or any obligations of employers regarding charges or taxes for unemployment compensation, including any filing of information, or any appeal, hearing, or other proceeding regarding unemployment benefit claims, charges or taxes before any representative of the division, unless the authorized agent is registered with the division pursuant to this section.

Payroll service organizations generally do not "represent" parties before the division, with the exception of some firms with branches or subsidiaries that do represent employers in proceedings regarding claims for unemployment benefits. With respect to those divisions and those specific functions, we agree that SB 1968 calls for registration and oversight. However, we do not believe that the function of filing wage and tax reports would qualify as representation, or that the act of filing such reports would constitute a "procedure with the division".

If the justification for requiring registration of payroll service firms is to merely identify them, all such service providers already have a "Payroll Service TPID" identification number issued by the Division of Revenue, and every wage and tax report filed has a TPID ID number in the header record. Consequently DLWD already knows the identity of each filing organization, and which payroll service filed each quarterly report. We have no concerns about the requirement to apply for a Payroll Service TPID number to facilitate electronic filing requirements. But DLWD's proposed registration requirement implies more substantive oversight of the industry.

Payroll service firms do occasionally call the Department to clarify the cause of any assessment notice related to a return or wage report filed by the service provider. These types of interactions are incidental to the filing process, and should not be considered "representation" of employers. (Nor is there is a fee assessed for correcting any errors in a wage and tax report electronically transmitted by the payroll service.)

There are three problems that would be created by adopting an overly broad approach; i.e., requiring payroll service providers to register under the Act:

First, it would inadvertently raise public expectations that the Department has assumed responsibility for the performance of the service providers that it oversees. In the payroll service industry it is important that businesses exercise caution and diligence in selecting and monitoring an appropriate service provider, because they will be entrusting significant tax funds to the service provider. As you know, the IRS, Division of Taxation and DLWD all hold businesses responsible for payment of taxes, even if they entrust such taxes to a third party for remittance.

While theft of client tax funds is exceedingly rare, state registration requirements result in businesses being less diligent in selecting and monitoring a service provider. The appearance of



a state license is a powerful thing to potential payroll service clients. The implied understanding is *"The state licensed them, so if there are any issues it will be the state's problem."* Businesses would rely on the apparent state license, and DLWD could be criticized for failing to properly oversee the industry if there ever was a problem.

Secondly, if the Department intends to regulate those who file wage and tax reports, DLWD would also need to seek the registration of several hundred (if not thousand) bookkeepers, accountants and other tax advisers and preparation firms who file such returns as part of their service offerings. There are also many software companies, Internet-based service providers and tax filing transmitters that would also qualify under the Department's broad interpretation. As of June 2009 there were some 8,932 payroll service organizations nationwide that were registered with the IRS as Reporting Agents. It could be a substantial and costly task to educate and secure the registrations of all service providers that assist New Jersey employers in complying with state electronic filing mandates.

Thirdly, none of the substantive provisions of SB 1968 relate to the functions of filing and paying UI wage and tax reports. Consequently, the Department would need to develop appropriate standards of performance against which to measure payroll service organizations, without any legislative guidance.

Again, there is no evidence that the New Jersey legislature was at all concerned about the payroll services industry, or intended that the Department take on the responsibility for regulating an industry entirely unrelated to the subject of the bill.

We ask that the Department clarify that registration is only necessary with respect to the functions of representing parties for a fee in communications with, or hearings or other proceedings with DLWD in connection with unemployment benefit claims administration. If the Department wishes to proceed with the announced registration requirement as stated on December 8<sup>th</sup>, we would appreciate the opportunity to meet with you to discuss this in more detail. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pete Isberg", with a small blue square mark at the end of the signature.

Pete Isberg  
National Payroll Reporting Consortium, Inc.  
[Pete\\_Isberg@nprc-inc.org](mailto:Pete_Isberg@nprc-inc.org)  
909 971-7670

[www.nprc-inc.org](http://www.nprc-inc.org)