

WEBINAR SERIES

Unemployment Fraud in 2021, and Continued Legislative Updates

February 17, 2021

PrestigePEO Webinar
Guest Speakers



WEBINAR HOST

Jason Flinn

Director of HR Client Services
PrestigePEO



Andy Lubash

Founder & CEO
PrestigePEO



Carol Sawyer

Tax Manager
PrestigePEO

PrestigePEO Webinar

Today's Presenters



Andy Lubash

Andy Lubash, Founder & CEO

As a founding partner and principal at PrestigePEO, Andrew is fundamental in promoting the PrestigePEO brand, negotiating employee benefit plan renewals, providing guidance on Workers' Compensation and EPLI renewals, and managing the PrestigePEO 401(k) plan.



Jason Flinn

Jason Flinn, Director of HR Client Services

Jason oversees the team of Human Resource Business Partners in their efforts to provide outstanding guidance to PrestigePEO's client companies. Jason is also responsible for providing the strategic backbone that helps manage PrestigePEO's relationship with its client companies, and mentoring clients to maximize workflow efficiencies.



Carol Sawyer

Carol Sawyer, Controller

Carol Sawyer, Controller at PrestigePEO, is our resident tax expert. She understands the implications of all tax-related legislation on employers (including the FFCRA, CARES Act, PPPFA, and CAA) and works to communicate them with each of our clients. She spends her time addressing concerns around tax credits and helping our clients maximize the benefits available to them through federal relief programs. Carol also oversees the accounting department here at PrestigePEO.

Today's Agenda

- Unemployment Insurance Fraud
- Employee Retention Tax Credit (ERTC)
- Paycheck Protection Program (PPP)

Webinar Forum

All participants are muted.

Please type questions in the side navigation panel and we will try to address most questions during today's session.

Today's presentation will be posted online at prestigepeo.com/blogs/



Unemployment Insurance Fraud

Unemployment Insurance Fraud

- The United States Department of Labor, FBI and Secret Service have all seen a spike in fraudulent unemployment insurance claims complaints related to the ongoing COVID-19 pandemic
- The passing of the CARES Act helped to increase the fraudulent activity by making lucrative federal funds available. Many states also lifted some or all of the standard qualifications around unemployment benefits.
- What is unemployment insurance fraud?
 - Employer Fraud
 - Claimant Fraud
 - Identity Theft
- What are the penalties for unemployment insurance fraud?
 - All states are required to assess a penalty of not less than 15% of the amount of the fraudulent payment.
 - According to US DOL guidelines, the states are required and expected to enforce its own unemployment insurance laws.



Unemployment Fraud – By the Numbers



Sources: NYS Department of Labor

- **New York State**

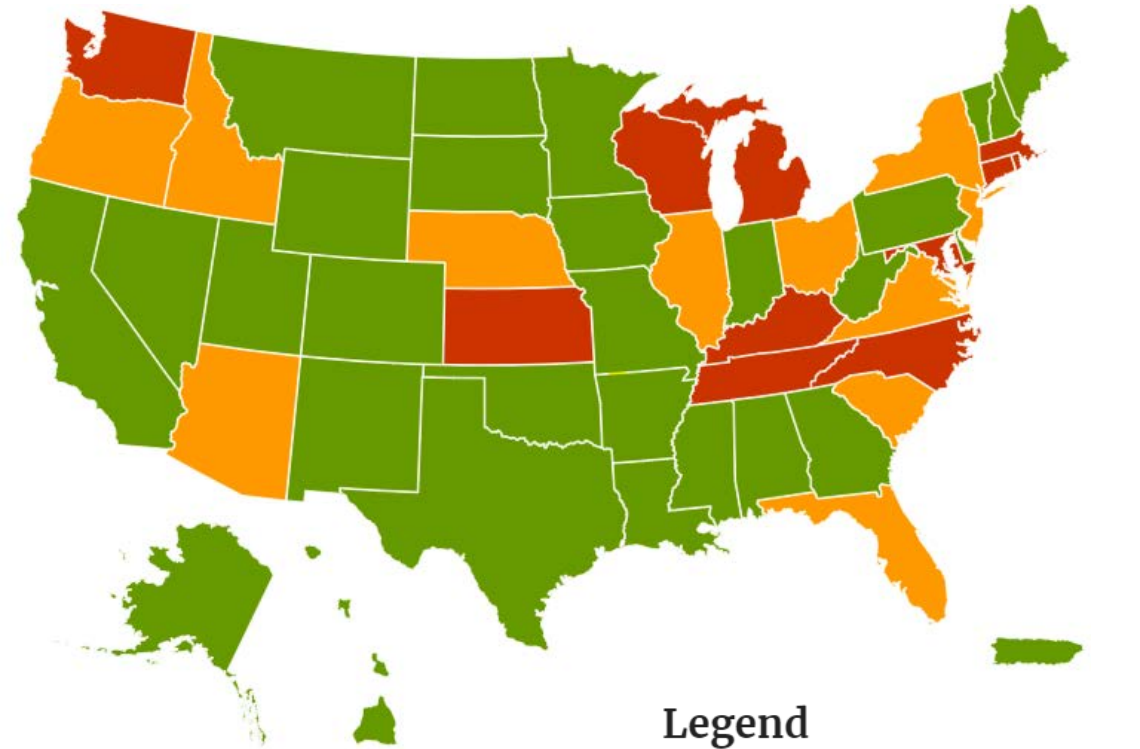
- \$65 Billion in Unemployment Benefits paid to New Yorkers since the start of the Pandemic
- 30+ years of benefits paid in the past 11 months
- NYS Department of Labor has Identified Over 425,000 Fraudulent Claims
 - \$5.5 Billion in Unemployment Benefits Saved

- **How is it happening?**




- The identities of real New Yorkers are being used
- Likely the result of data being stolen during previous data breaches involving institutions like banks, insurance companies and major employers
- Criminals using the data obtained to file fraudulent claims and illegally collect benefits of individuals who are not unemployed

Unemployment Insurance Fraud - By the State

- All states are experiencing spikes in unemployment fraud. While the initial spike of unemployment fraud claims occurred in Washington State - California, Michigan, Massachusetts and Florida have seen larger increases as well
 - 140K Michigan unemployment claims flagged for fraud deemed legitimate by state
 - \$655 Million in unemployment fraud claims paid in Washington, \$334 Million recovered
 - Unemployment fraud could cost Ohioans \$460 million this year



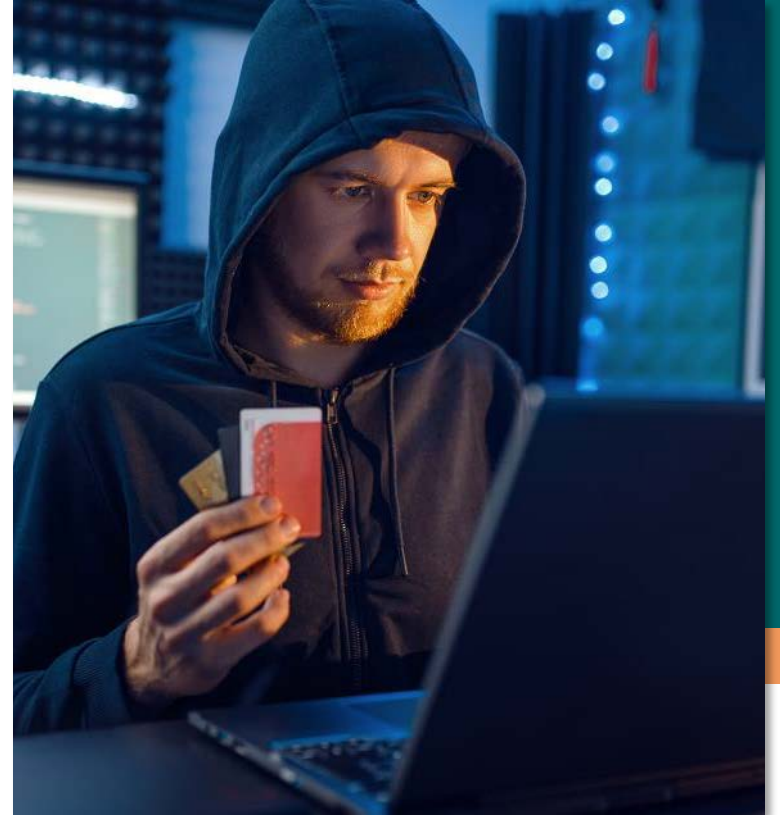
Legend

-  Improper Payment Rate: Greater than 13%
-  Improper Payment Rate: 10-13%
-  Improper Payment Rate: Less than 10%

Sources: Experian; US Department of Labor

Identity Theft

- **What is Identity Theft?**
 - Identity theft occurs when someone uses another person's personal identifying information, like their name, identifying number, or credit card number, without their permission, to commit fraud or other crimes.
- **A variety of techniques are used to obtain the data involved in stealing someone's identity. These techniques include:**
 - Purchasing stolen PII (Personal Identifying Information)
 - Use of PII obtained during previous data breaches
 - Computer intrusions
 - Cold-calling victims while using impersonation scams
 - Email phishing schemes
 - Physical theft of data from individuals or third parties
 - Theft of data from public websites and social media accounts
 - Other methods



Unemployment Fraud – Am I a Victim?



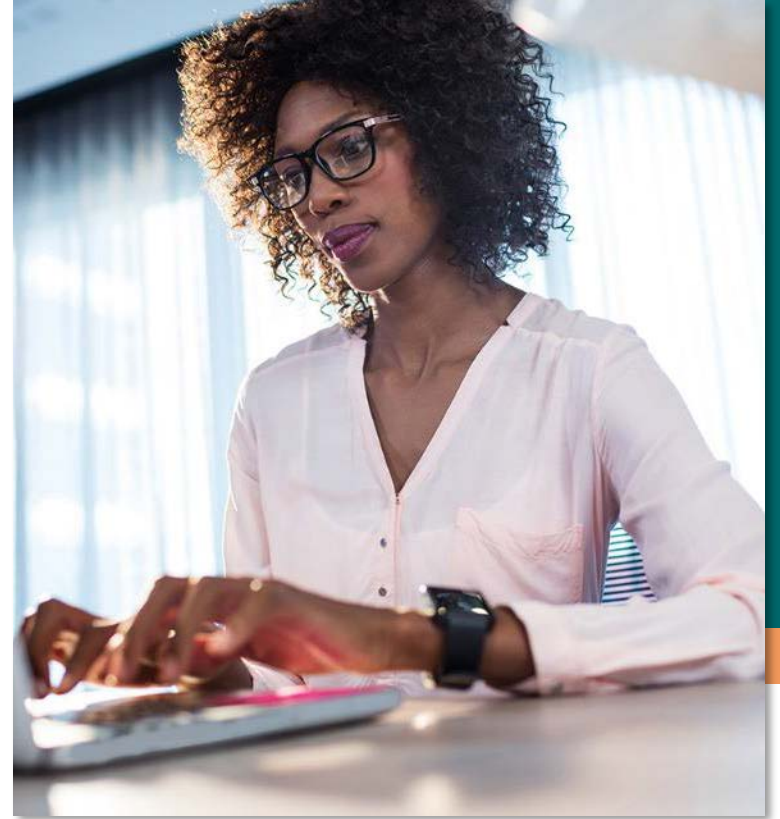
- **How are fraudulent unemployment claims identified?**
 - Most employers become aware of fraudulent unemployment claims by receiving a claim notice from a state unemployment agency for an employee who continues to be employed.
- **Signs that you may be a victim**
 - It's not uncommon for victims to have no knowledge that criminals have applied for UI benefits in their name. Below are some red flags:
 - You file a UI claim for yourself and are alerted that your claim was rejected because they have already received a claim under your name.
 - You did not apply for unemployment benefits but you received a letter of determination from the state workforce agency regarding a UI claim filed under your name.
 - You are notified that you failed the security verification process for your UI claim.
 - You are told by a current or former employer that a UI claim had been submitted with your PII.
- **Who is at risk?**
 - Those who have already been the victim of identity theft.
 - Those who have had their PII exposed in a past data breach.
 - Those who have given their PII to someone who wants to help facilitate the filing of UI, often for a fee.

What Can Employers Do?

- **Educate the Workforce**
 - Notify your employees about the increase in these types of unemployment scams; inform them of the fact that individuals who have previously been subject to identity theft are more susceptible; and educate them on steps to protect their PII.
- **Educate Yourself and Be Prepared**
 - HR professionals should be on alert and should review any notices from the state unemployment administrator with heightened scrutiny.
- **Upon receipt of a fraudulent unemployment claim, an employer should take following steps:**
 - Confirm the Employee's Status
 - Follow the Applicable Procedures to Dispute the Claim
 - Communicate with the Employee
 - Maintain Records
 - Monitor Unemployment Claims
 - Notify the State

What Can Employees Do?

- **What steps should an employee take if they are a victim of fraudulent unemployment claim?**
 - Report Any Notices to the State
 - Contact Credit Bureaus
 - Notify the Internal Revenue Service
 - www.irs.gov
 - www.identitytheft.gov
 - Monitor Personal Accounts
 - Ensure documents are properly stored and deleted
 - Phishing and Smishing
- **How can the employee report unemployment insurance fraud?**
 - US Department of Labor
 - State Department of Labor
- **Understand how to protect yourself from fraud.**

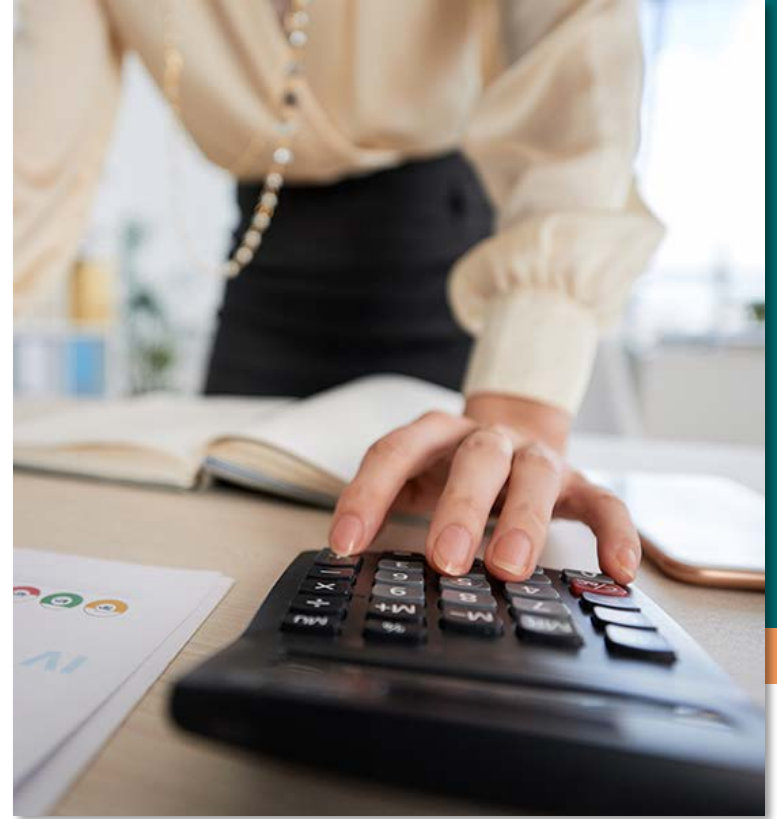




Employee Retention Tax Credit (ERTC)

Employee Retention Tax Credit (ERTC)

- The ERTC is a credit against payroll taxes. The tax credit reduces the liability for Federal payroll taxes including income tax withholding, Social Security and Medicare tax withholding and employer match.
- This is not a deferral of taxes. This is a credit against the amount owed.
- The ERTC was originally a part of the CARES act passed in March 2020.
- The Continuing Appropriations Act, 2021 made both retroactive changes for 2020 and prospective changes for 2021
- Wages used to claim the credit are not deductible for income tax purposes to the extent of the credit (similar to rules for FICA Tip Credit for restaurants)



2020 Rules (Pre-CCA)

- ERTC is a credit equal to 50% of “qualified wages” per employee.
- Total wages per employee is capped at \$10,000 per year - \$5,000 tax credit per employee.
- The ERTC is available to employers that
 - Had operations fully or partially suspended under government orders due to Covid-19
 - Had a decline of at least 50% in gross receipts as compared to the same quarter in 2019 (this test is applied to each quarter). Once gross receipts has rebounded to 80% quarter over quarter, credit ends.
- For employers with 100 or fewer “full-time employees”, all employee wages are qualified.
- For employers with 100-500 “full-time employees”, wages paid to employees that were not working were qualified wages.
- Businesses that received a PPP loan were not eligible for the ERTC.
- Credit calculation includes employer’s “properly allocable” qualified health plan expenses with respect to wages.
- Qualified wages are not deductible on the tax return on the portion equal to the ERTC.

2020 Rules CCA Retroactive Changes



- Businesses that received a PPP loan may claim the credit with respect to qualified wages. However, the same wages cannot be used to both qualify for forgiveness of a PPP loan and as ERC Qualified Wages.
- Unanswered question – Can the credit be calculated on wages that were included on a loan forgiveness application but did not affect the amount of loan forgiveness?
- How do you apply for the retroactive credit for 2020?
 - As of today, the ERTC for 2020 is claimed by filing amended 941's.
 - Hoping for additional guidance from IRS or Congress on the possibility of claiming the 2020 retroactive credits on 2021 Form 941 and insuring that qualifying wages for the credit were not paid with PPP funds.

ERTC Prospective Changes for 2021

- The tax credit has been extended through June 30, 2021
- The tax credit is 70% of qualified wages and group health plan expenses
- The \$10,000 cap is now a quarterly cap, not yearly.
- Potential credit for 2021 is \$14,000 per employee.
- Gross receipts test is now a decline of more than 20% compared to the same calendar quarter in 2019. Government order suspension, unchanged.
- Allows the option of using the immediately preceding calendar quarter for determining eligibility.
- To claim the credit, contact your payroll specialist for the Q1 2021 ERTC attestation form
- Deadline for notifying Prestige that a business qualifies for the ERTC for Q1 2021 is Friday, March 26th. This will allow Prestige to withhold the taxes from a pending Federal tax deposit and refund that money to the client on the invoice.
- Clients returning the attestation forms after that date will not receive the credit until the overpayment is refunded by the IRS.

Gross Receipts Test – Which quarters to use?

To Determine Eligibility for:	Compare gross receipts of:	Permitted Alternative
Q1 2020 (March 12-March 30)	Q1 2019 to Q1 2020	
Q2 2020	Q2 2019 to Q2 2020	
Q3 2020	Q3 2019 to Q3 2020	
Q4 2020	Q4 2019 to Q4 2020	
Q1 2021	Q1 2019 to Q1 2021	Q4 2019 to Q4 2020
Q2 2021	Q2 2019 to Q2 2021	Q1 2019 to Q1 2021

Gross Receipts Test – Example



- A company meets the 50% reduced receipts test for Q2, but gross receipts rebound to more than 80% in Q3 2020. What quarters is the company eligible for the ERTC?
- The company would be eligible for the credit for Q2 and Q3, but not for Q4.
- This is particularly problematic as most PPP borrowers received their loan proceeds in April and May of 2020.



Paycheck Protection Program (PPP)

PPP Loan Program Second Draw – Qualifications



- The business employs no more than 300 employees per physical location
- The business has used, or will use, the full amount of its first PPP loan
- The business has experienced at least a 25% reduction in gross receipts in at least one quarter in 2020 as compared to same quarter in 2019 (for ease of calculating, businesses that had a more than 25% reduction in 2020 as compared to 2019 may be used)

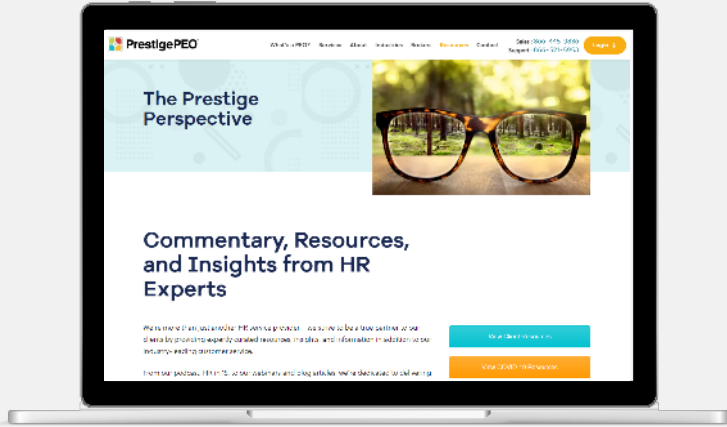
PPP Loan Program Second Draw – Documents for application from Prestige

- Prestige Loan Application report – for either 2019 or 2020
- Form 941/State quarterly unemployment returns or equivalent payroll processor records (Client Allocation Report)
- Evidence of employer contributions for retirement and group health plans
- Proof business was in operation on Feb. 15, 2019 (Client Allocation Report for February 2019).

PPP Loan Program Second Draw – Documents for application not provided by Prestige

- Partnerships may need to include a copy of the 1065 K-'s for proof of partner compensation paid.
- Documentation to support 25% or greater in gross receipts (for loans less than \$150,000, this will be submitted with forgiveness application)
- Reminder – loan application still has the attestation that the current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.

PrestigePEO Communications



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- **The Prestige Perspective** prestigepeo.com/blogs
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