

# ALERT

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## LABOR AND EMPLOYMENT

News Concerning  
Recent Labor and Employment Issues



## **Early Retirees May Receive Unemployment Compensation, Pennsylvania Supreme Court Rules**

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For more than 20 years, Pennsylvania retirees who accepted an early retirement incentive plan have been denied unemployment compensation benefits under the Unemployment Compensation Law (UC law). The Supreme Court of Pennsylvania departed from well-established precedent on December 28, 2012, opening the door for early retirees to qualify for unemployment compensation.

In *Diehl v. Unemployment Compensation Board of Review*, the court considered whether the “voluntary layoff option” proviso (VLO proviso), found at Section 402(b) of the UC law, “permits employees to receive unemployment compensation benefits when they accept an early retirement plan offered pursuant to an employer-initiated workforce reduction.” The claimant in the case — like many before him — accepted such a plan and was denied benefits under a long-standing line of cases holding that the VLO proviso does not allow for such benefits.

The VLO proviso states, “no otherwise eligible claimant shall be denied benefits for any week in which his unemployment is due to exercising the option of accepting a layoff, from an available position pursuant to a labor-management contract agreement, or pursuant to an established employer plan, program, or

policy.” Since its 1987 decision in *Sievers v. Unemployment Compensation Board of Review*, the Pennsylvania Commonwealth Court has held that this provision does not apply to employees who accept early retirement programs.

Departing from this line of Commonwealth Court opinions, the Pennsylvania Supreme Court interpreted “accepting a layoff” to include accepting an early retirement program as part of a reduction in force. The court found the term “layoff” to be ambiguous, and noted that ambiguity in the UC law must be interpreted in favor of the claimant. “Accordingly,” the court concluded, “we overrule the longstanding interpretation of the Commonwealth Court precluding employees who accept their employer’s early retirement packages from receiving unemployment compensation benefits.”

A copy of the decision is [here](#).

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*To discuss any questions you may have regarding the opinion discussed in this Alert, or how it may apply to your particular circumstances, please contact Emily S. Miller at [esmiller@cozen.com](mailto:esmiller@cozen.com) or 215.665.2142.*

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