

The background of the slide features a large, faded seal of the Commonwealth of Pennsylvania. The seal is circular and contains a central shield with a ship, a plow, and a sheaf of wheat. Above the shield is a banner with the motto "E PLURIBUS UNUM". The shield is surrounded by a wreath and a banner at the bottom with the date "1776".

Welcome to De-Mystifying Unemployment Insurance

Philadelphia Regional Office

September 12-14, 2011

Today's Topics

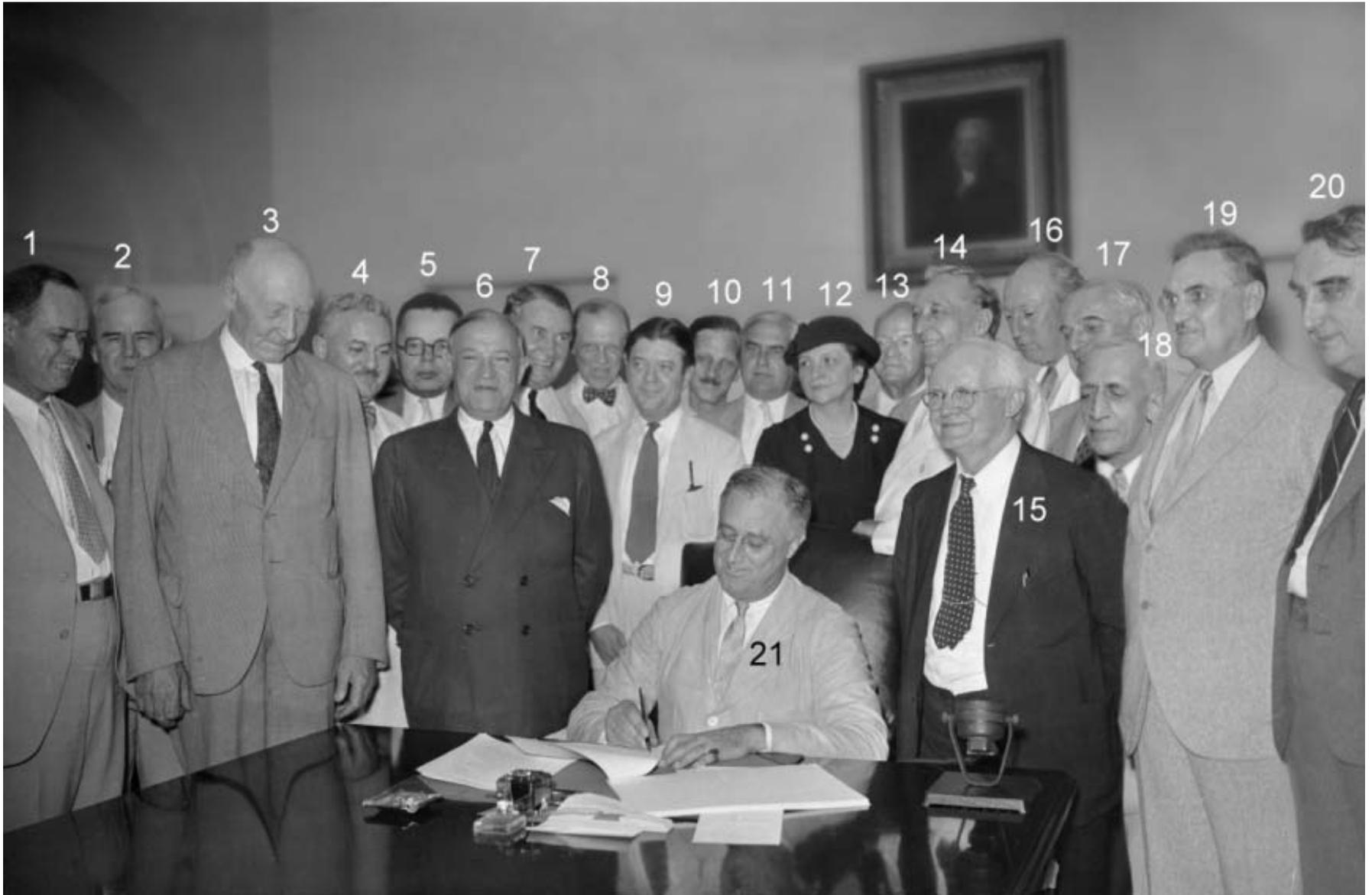
Everything you wanted to know about Unemployment Insurance but was afraid to ask.

Why Cooperation between a state UI agency and you is important.

Misclassified Workers



Happy 75th Birthday !



De-Mystifying Unemployment Insurance

How the Process Works

- Individual is separated from employment
- Individual applies for unemployment
- At the time of the application, the “claimant” is asked many questions to help ascertain if they may eligible for benefits.

Why and when were you separated?

Name and address of your latest employer

Name and address of previous employers, within the past 16 months

Are you able and available for work?



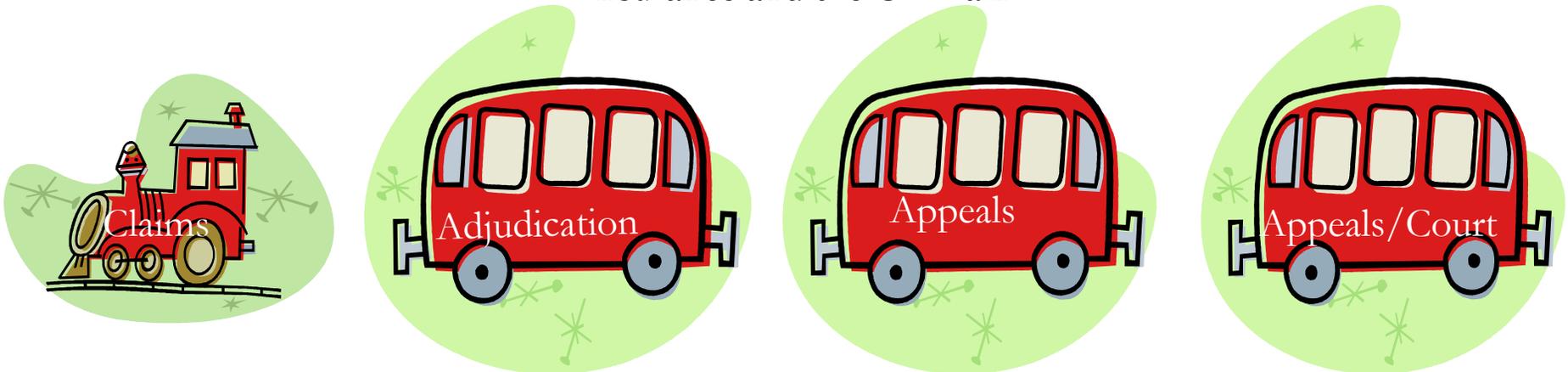
De-Mystifying Unemployment Insurance

How the Process Works

- The agency will then:
 - Contact the last employer to ascertain the reason(s) the claimant was separated.
 - Upon receipt of the employer's response, the agency will then:
 - Declare the claimant eligible.
 - Pursue further information from the claimant and the employer.
 - Make an eligibility decision, which is appealable by both parties.



Demystifying Unemployment Insurance and the UI Train



These are the basic “cars” in the UI train. To understand UI and all of it’s cars, you must understand how one car, or action, effects the other.

Claims: A claimant files an unemployment claim following a separation from an employer.

Adjudication: The claim, if not a lack of work (LOW), must be adjudicated to determine eligibility. The adjudicator has 21 days to adjudicate the case and render a decision. Any party not agreeing with the eligibility determination has the right to appeal.

Appeals: the case is appealed to the appeals division (Lower Authority). A hearing is held and a new decision is rendered either affirming, overturning or remanding the original decision for further adjudication.

Appeal/ District Court: A decision of Lower Authority Appeals can be appealed to a Higher Authority appeals and eventually to the Superior/Supreme/District Court for adjudication.



The UI Train



The importance of the claims taking procedures and the staff assigned to undergo this task can not be emphasized enough. This process is where potential eligibility issues are detected as well as gathering the correct information for known issues. The entire claims process hinges on intake.

Either inadequate or poor initial claims taking could also cause delay in benefit payments and or an overpayment.

There are three basic separation reasons:

- Terminated or fired
- Quit
- Lack of work



The UI Train

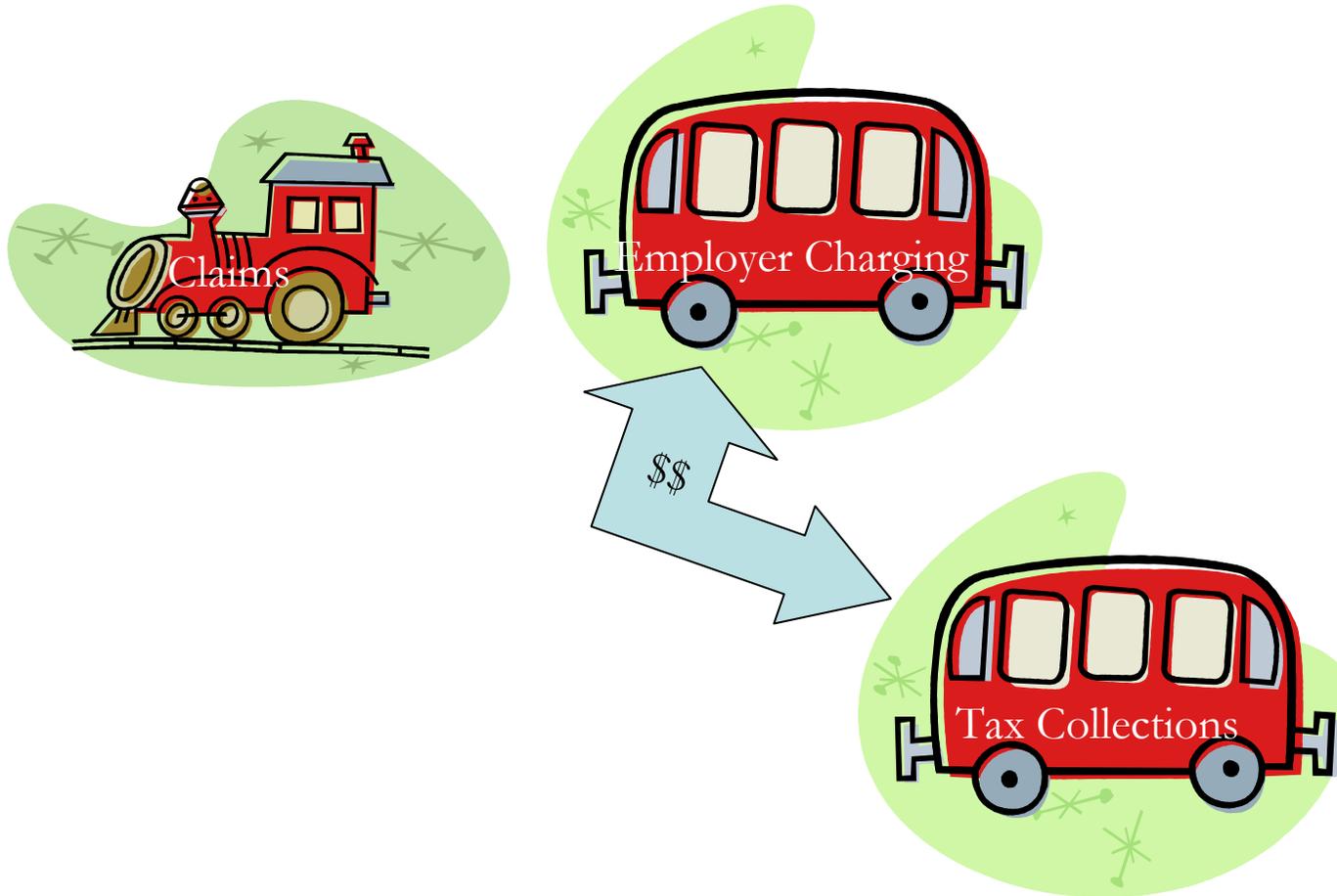


If the claim has an “issue” then it must be adjudicated, and a decision issued, prior to the issuance of a UI payment. The case must be decided and issued in 21 days.

If the adjudication process is not properly completed, according to guidelines, the claimant or employer could suffer. An incorrect decision can result in one of two things happening, an inappropriate denial of benefits or an overpayment due to the decision being reversed on appeal. Any monies from the overpayment must be recovered by the Benefit Payment Control (BPC) unit. The employer could suffer by having their employer account “charged” in error, thus prompting an employer appeal on the issue or the charge.



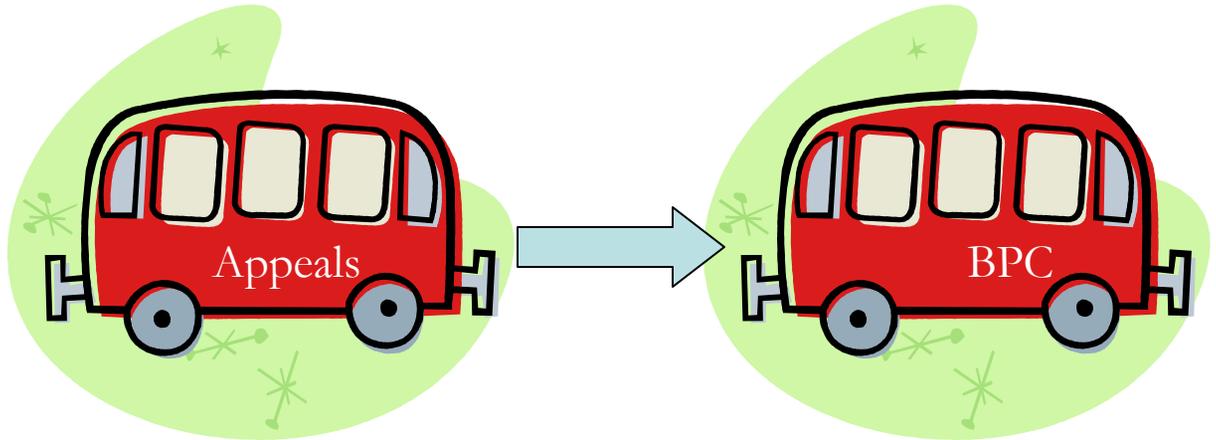
The UI Train



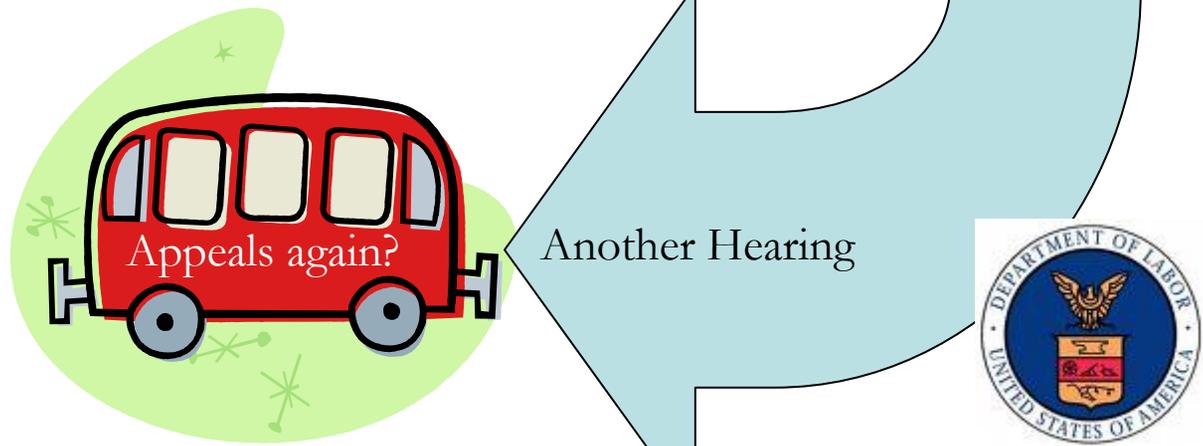
Once a claimant is determined to be eligible, the employer's account is charged. Employers are required to report employee wages on a quarterly basis and pay a tax on each employee, to the agency. The tax is determined by the number of employees that have filed claims against the employer. This is called "experience". The "tax" unit is now charged with collecting the appropriate assessment.



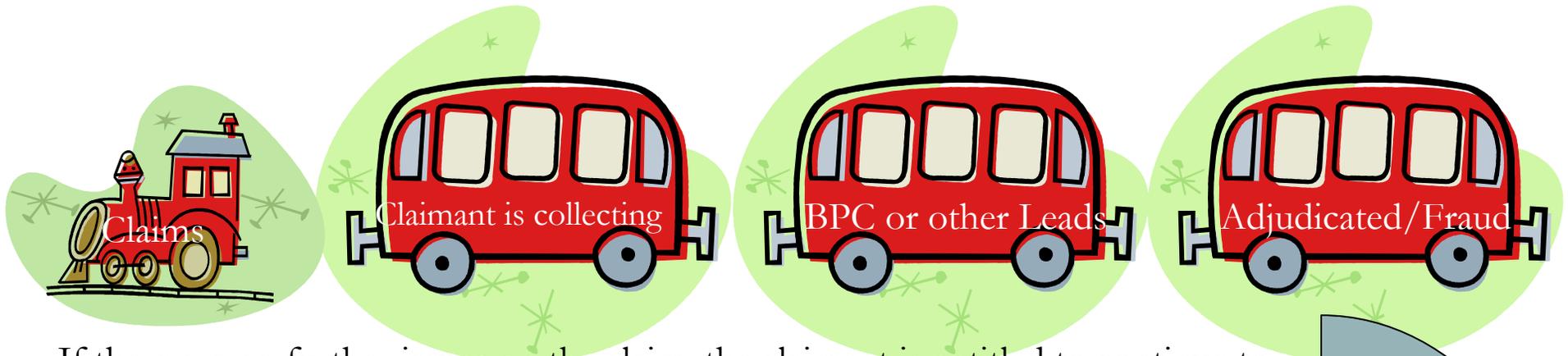
The UI Train



The claimant is now collecting benefits, but the employer has appealed the ruling of the original decision. If the original eligibility decision is overturned, all benefits received by the claimant are now considered overpaid. This is when the BPC unit must establish the overpayment and COLLECT the overpaid amount of benefits from the claimant. The claimant is still entitled to appeal both the eligibility as well as the overpayment decisions. Thus another appeals opportunity. Late or poor quality appeal decisions effect all appellants.



The UI Train



If there are no further issues on the claim, the claimant is entitled to continue to collect benefits. Should the claimant start working and fail to notify the agency, the claimant is overpaid. It is the responsibility of the BPC unit to detect the issue of working either through a cross match; information from the employer or notification from any other source. The agency is required to contact the claimant with information regarding his employment. Should the agency determine the claimant failed to notify the agency, the claimant is disqualified for benefits and may be considered fraud. The claimant, again is entitled to file an appeal against any BPC fraud determination. If the claimant is disqualified, fraud or no fraud, BPC must attempt to collect the over paid amount.



The UI Train



As you can see, each car of the train has an affect on the next car and the performance of each has direct impact on the others. If one car breaks away or fails, the remaining cars will also fail. Ultimately, the claimant and or the employer suffers and they are not given the service they deserve.



The UI Train Reviews



- BTQ reviews separation decisions
- BTQ Is a tool to gauge the quality of all separations decisions

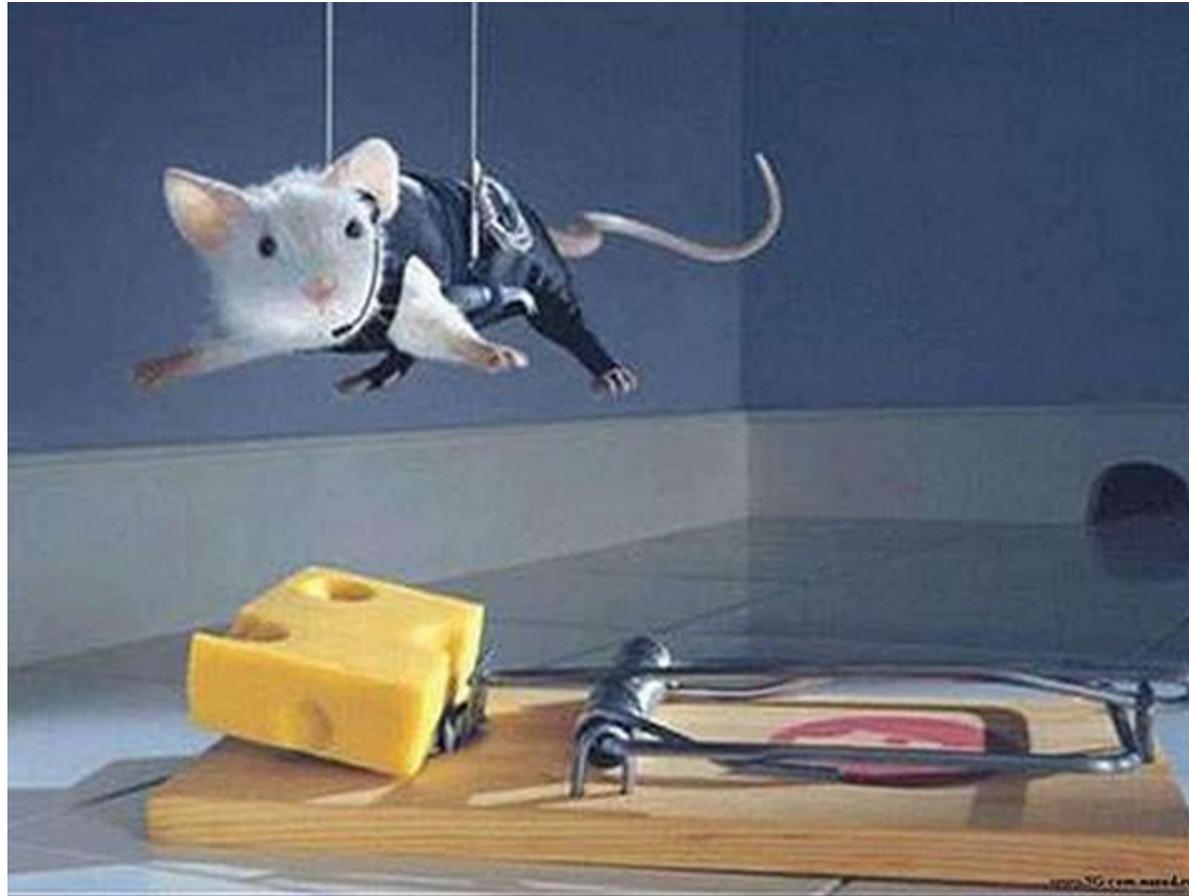
- The tax system is reviewed by the state Tax Performance System (TPS) reviewer annually
- TPS ensures the tax functions (13) are being administered properly

- BPC is a unit in each state
- The BPC review ensures the BPC program is operating correctly as it pertains to the detection, establishment and recovery of UI overpayments

- BAM reviews the eligibility of a claim and may “touch” all components of a UI claim
- This is a tool used to determine the effectiveness of the overall claims process



Cooperation



Cooperation

To effectively serve both the employee (claimant) and the employer, certain processes must be understood.

Claimant:

- Timely filing of the UI claim by the claimant
- Presenting all necessary information at the time of the claim

Employer:

- File all wage reports accurately and timely
- Cooperate, on a timely basis, for requests for separation



Cooperation

Claimant:

- Timely filing of the UI claim by the claimant
- Presenting all necessary information at the time of the claim
 - All PII (name rank and serial number)
 - Employer Address
 - Separation Reason
 - Other
 - ❖ Pension information
 - ❖ Severance information



Cooperation

Consequences

- Delayed Payment
- Incorrect Payment
 - Underpayment
 - Overpayment



Cooperation

Employer:

- File all wage reports accurately and timely
- Cooperate, on a **TIMELY** basis, for requests for separation and include all pertinent documentation
 - Write ups, written warnings, etc.
 - Pension or severance information
 - Policies or employer handbook
- Respond **TIMELY** to any further requests from the agency



Cooperation

Consequences

Financial Penalties

Risk of Fiscal Audit

- State Agency
- IRS

Prosecution

- State Courts
- Federal Courts

Account Charged=

- Higher Unemployment Tax



Worker Misclassification and It's Impact on You

- What is a misclassified worker?
- Who is misclassified?
- Who misclassifies the workers?
- What impact does this have on the employee?
- What impact does this have on the employer?



Define Worker Misclassification

What is worker misclassification?

Employee/worker misclassification occurs when an employer classifies a worker as an independent contractor rather than an employee

What's the problem for workers?

Workers may not receive minimum wages or may not receive any payment

- Workers not covered under any company health insurance program
- Workers may not receive workers' compensation coverage
- Workers may not receive unemployment benefits when separated

What's the problem for employers?

- Employers that play by the rules are at an economic disadvantage
- Employers may lose work to those who misclassify
- Employers pay higher taxes to compensate for those who don't pay their fair share



Why is it important to correctly classify workers?

An employer has different legal, tax and financial obligations depending on how a worker is classified. For example, if a worker is classified as an **employee**,

The *employer* is required to:

- withhold income, F.I.C.A. (Social Security) and Medicare taxes from the employee's wages;
- pay F.I.C.A. (Social Security) and Medicare taxes in addition to the employee's share;
- pay unemployment taxes (which provides insurance coverage in case the worker is separated) and
- buy workers compensation insurance (which provides insurance coverage in case the worker is injured on the job.)



Worker Misclassification and It's Impact on You

- If a worker is classified as an **independent contractor**, the employer generally does not have those obligations and;
- **The *worker* is required to:**
 - make quarterly estimated payments for income taxes, and;
 - pay self employment taxes.
- An independent contractor is not entitled to unemployment compensation and, in many cases, will not receive workers compensation if injured on the job.
- **Most importantly, the intentional misclassification of workers is illegal and constitutes tax and insurance evasion. Employers engaging in this practice may be subject to significant penalties and fines.**



How is a Misclassified Worker Discovered?

Misclassified workers are discovered primarily two ways

- Missing or blocked claim inquiry
- Field Audit



Misclassification Test

ABC TEST (Common Law Test)

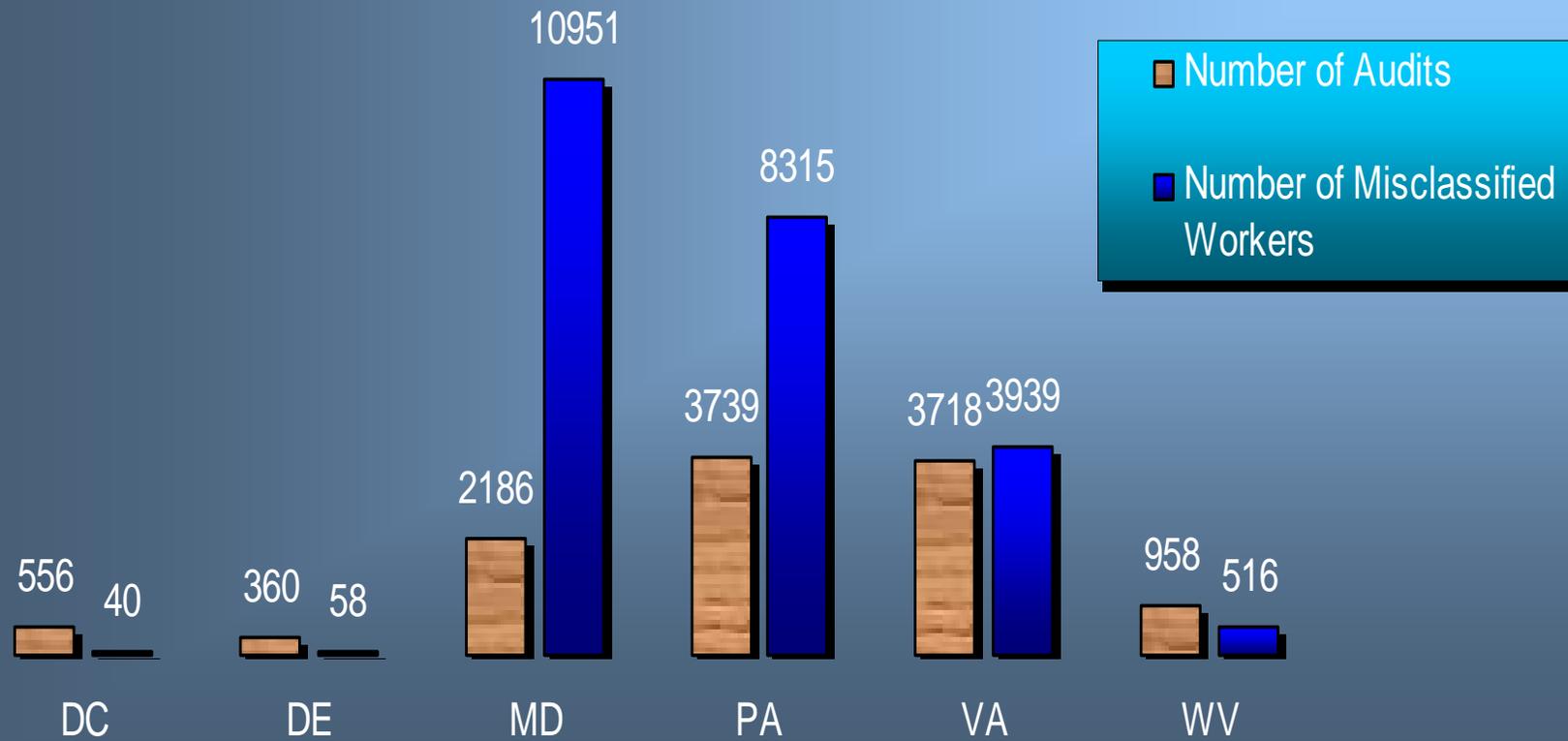
- Direction and Control
- Outside the usual course of business
- The individual must be customarily engaged in an independent trade etc (cleaning worker)

IRS TEST

3 Questions Test

- Behavioral Control
- Financial Control
- Relationship of the Parties

Number of Misclassified Workers in Region II versus the Number of Audits Completed in 2010



Targeted Industries

- o Construction
- o Restaurants
- o Truck transportation
- o Limousine Service
- o Couriers and Messengers
- o Mortgage Services
- o Security Services
- o Landscaping
- o Home Health Care



Some Stats

- In 1984, the IRS made its last comprehensive misclassification estimate, which found that 15% of employers misclassified 3.4 million workers as independent contractors, causing an estimated total tax loss of \$1.6 billion in Social Security tax, unemployment tax, and income tax.
- 1992 – IRS Tax Gap report estimated SS and FUTA revenue loss of \$3.3 Billion.



QUESTIONS?

Ooh Ooh Ooh

