

Understanding Unemployment

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Sooner or later, from the time the first employee is fired or resigns, every restaurant owner will be forced to deal with the state unemployment system. The system can be frustrating for employers, but understanding how the system works and how (and when) to effectively contest claims is essential to lowering a company's insurance rates.

The unemployment insurance program provides benefits to workers who are unemployed through no fault of their own and who are ready, willing and able to work. The program is jointly run by the federal government and the states and is funded by employer-paid taxes. An employer's contributions to the unemployment insurance fund are based on a percentage of total compensation. That percentage depends on several factors, including the employer's experience rating. Like workers' compensation, every successful claim affects an employer's insurance rates.

For a claimant, there is no down side to filing a claim. The worst thing that can happen is that his/her claim is denied. The process begins when a claimant files a claim with the local state agency office. The agency will ask the worker to identify his/her most recent employer and the reason for termination. Next, the agency will contact the employer, either with a written request or in a telephone conference, and ask the employer to provide the reasons for the discharge. The claims examiner then issues a decision granting or denying benefits. If neither party appeals, the decision becomes final.

As many as 90 percent of claimants who are discharged are awarded benefits at this preliminary level. Because of the nature of the unemployment program, the laws are construed favorably toward granting benefits. For the state to deny benefits in a discharge case, the employer must prove that the worker was discharged for "misconduct in connection with employment." An employer can establish "misconduct" by demonstrating that it had reasonable work policies which the employee violated. Misconduct must be purposeful and, unless it is very serious, must usually have happened more than once. Written work rules and written warnings are the key to meeting the burden of proof.

Recently, Maryland's intermediate appellate court ruled that an employee will not be disqualified from receiving unemployment benefits where the employee made a "mere error in judgment." This is the rule in most states; an employee will not be disqualified where he/she made an honest mistake, used bad judgment or was merely negligent. But, if the employer can establish that the employee violated written work rules, the employer stands a better chance of obtaining a finding of misconduct.

One of the more difficult areas in which to establish misconduct is absenteeism. An agency, before disqualifying an employee, will look at the number of absences, whether the employee had good reasons for each absence, whether the employee notified the employer on each occasion and whether the employee had been properly warned. However, state agencies have held that employees who miss a lot of time, even for excused reasons, have a heightened duty not to miss additional time and to comply with the employer's notice requirements.

An employee who voluntarily quits is not normally entitled to unemployment benefits unless the employee can prove that he/she left for "good cause." It is not enough for an employee to show that he/she disagreed with or was dissatisfied with the employer's policies; an employee must show that he/she had a compelling reason to resign (e.g., sexual harassment) and that the employee exhausted all reasonable alternatives prior to quitting.

After an initial award is made, the parties will have period of time in which to appeal. If an appeal is made, the agency will set a hearing date and give both parties the opportunity to testify as to the facts surrounding the termination. Either party can be represented by an attorney and subpoena witnesses or documents. It is imperative that an employer bring someone to the hearing with first-hand knowledge of the facts. While a manager or human resources representative may be able to testify generally as to the company's policies and procedures, the company must show, by first-hand evidence, how the employee, in this instance, violated the policies.

Any further appeals will generally be based

on the record created at the hearing level; therefore, it is essential that an employer introduce all relevant documentation and testimony at the hearing. Employers win cases, and keep insurance rates low, when they can present evidence to show that they: (1) have work rules in place, (2) apply the work rules consistently and (3) document all instances of misconduct.