74th Annual
Texas Association of County Auditors Fall Conference
Horseshoe Bay Resort, Horseshoe Bay • Oct. 15-18, 2019

Where the gem of the Hill Country meets the land of legend and lure.
Navigating the Unemployment System
Agenda

Unemployment basics
Determining eligibility
Improving results
Unemployment hearings
Recent changes
UNEMPLOYMENT CLAIM: A claim made by a former employee to receive cash benefits for a period of time.
Texas Unemployment by the numbers

The state of Texas allows 26 weeks of benefits per benefit year.

In Texas, a claimant can collect between $68 and $507 per week for a maximum benefit of $13,182.

Texas’ unemployment rate was 3.4% as of July 2019.
In Texas, all political subdivisions, including counties and county-related districts, are required to pay unemployment taxes or to reimburse the state for payments made to claimants.
Employers are required to report wages and make payments on a quarterly basis.
**Taxed employer:**
County pays a tax to the state. The state uses these funds to pay unemployment benefits. Tax rate is set by the Texas Workforce Commission.

**Reimbursing employer:**
County reimburses the state for benefits paid to former employees. This is the funding method used by participants in the TAC Unemployment Fund.
Determining Eligibility
Eligibility requirements for a claimant

The claimant must ...

- Be able to work
- Be available to work
- Be actively seeking work
- Meet the state’s requirement for previous earnings and length of employment
- Be unemployed through no fault of their own
When does the county or district have to pay benefits?

<table>
<thead>
<tr>
<th>Base Period</th>
<th>Lag Period</th>
<th>Benefit Year</th>
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<tbody>
<tr>
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- **Bee County** (Base Period Employer)
- **Goliad County** (Base Period Employer)
- **Live Oak County** (Last Employer and Base Period Employer)

Reimbursing employers may now contest base-period claims.
When does the county or district have to pay benefits?

Quarter in progress:
Calendar quarter in which claim is filed **(does not count toward benefits)**.

Bee County (Base Period Employer)

Goliad County (Base Period Employer)

Live Oak County (Last Employer and Base Period Employer)

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52 Weeks from claim filing date

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When does the county or district have to pay benefits?

Reimbursing employers may now contest base-period claims.

Bee County (Base Period Employer)
Goliad County (Base Period Employer)
Live Oak County (Last Employer and Base Period Employer)

Lag Period:
The calendar quarter immediately preceding the quarter in which the initial claim is filed (does not count toward benefits).
When does the county or district have to pay benefits?

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52 Weeks from claim filing date
When does the county or district have to pay benefits?

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**Base Period:**
The 4 calendar quarters immediately preceding the lag period.

- **Bee County** (Base Period Employer)
- **Goliad County** (Base Period Employer)
- **Live Oak County** (Last Employer and Base Period Employer)

Reimbursing employers may now contest base-period claims.
When does the county have to pay benefits?

**Base period claim:** The claim notice is sent to each employer for which the claimant worked during the base period. Base Period earnings determine the ex-employee’s weekly benefit amounts and proportions of the benefit chargeable to each employer (if more than 1 during base period).

**Last employer claim:** The claim notice sent to the most recent employer from which the employee has separated.
Unemployment Claim Process

Separation:
Employee voluntarily quits, is discharged, or is laid off
Unemployment Claim Process

- Separation
  - Claim
    - Determination
      - Protest
      - Appeal
        - Hearing
          - Decision
            - Appeal
              - Board of Review
Claim:
Employee files a claim for unemployment benefits with the Texas Workforce Commission.
Unemployment Claim Process

- Separation
- Claim
- Determination
- Protest
- Hearing
- Appeal
- Decision
- Appeal
- Board of Review
Protest: County receives notification of employee’s claim and submits protest with documentation.
Unemployment Claim Process

- Separation
  - Claim
    - Determination
      - Appeal
        - Hearing
          - Decision
            - Appeal
              - Board of Review
            - Protest
Determination:
TWC reviews employer and employee documentation and makes a decision whether or not benefits are approved, based on documentation.
Unemployment Claim Process

- Separation
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Unemployment Claim Process

Hearing

Separation

Claim

Determination

Protest

Appeal

Board of Review

Appeal:
Employee or employer files appeal of determination with TWC, who will then schedule a hearing.
Unemployment Claim Process

Separation

Claim

Protest

Determination

Appeal

Decision

Hearing

Appeal

Board of Review
Hearing: Hearing is conducted over the phone and is recorded. Party with burden of proof is interviewed first.
Unemployment Claim Process

- Separation
  - Claim
  - Determination
    - Protest
  - Appeal
    - Decision
      - Appeal
        - Board of Review
      - Hearing
Unemployment Claim Process

**Employer/Client Involvement**

- **Decision:** Decision is usually made within two weeks.
Unemployment Claim Process

- Separation
  - Claim
    - Determination
      - Protest
      - Appeal
      - Decision
        - Hearing
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            - Board of Review
Unemployment Claim Process

2nd Appeal:
The losing party can contest the decision made from the hearing.
Unemployment Claim Process

Separation

Claim

Determination

Protest

Appeal

Decision

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Board of Review

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Unemployment Claim Process

Board of Review:
The Board listens to the tape of the hearing, reviews the documentation and makes their decision. Neither the claimant nor the employer provide any further input.
Unemployment Claim Process

- Separation
  - Claim
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Improving Results
Winning the Claim... Before It Is Filed
Types of Separations where employee *may* receive benefits

**Voluntary Quit**
- “I quit”
- No show/no call for 3 or more days

**Discharge**
- Misconduct
- Attendance
- Violation of Policy

**Lack of Work**
- Completed Assignments
- Jail closing / Department eliminated / Grant ended
- Position eliminated
Voluntary Quit

The **burden of proof** is the responsibility of the former *employee* to show there was **good cause** to quit attributable to the employer.

**Good Cause:**
A change in the condition of employment or compelling reasons.

- **Forced resignation is not a Voluntary Quit, it is a Discharge**
- **Continued employment must be available**
- **ALWAYS ask for a signed letter of resignation for a Voluntary Quit**
Discharge

The burden of proof is the responsibility of the employer to prove that the employee was discharged for misconduct.

Misconduct:
A deliberate and willful disregard of employer’s interest or repeated violations of a known company policy.
Misconduct vs. Inability  *(Wouldn’t vs.Couldn’t)*

- Is the person trying, but just not able to grasp the duties of the job?
- Does the individual have the skill set to perform the job?
- Can employer show the individual performed this job in an acceptable manner for a reasonable period of time?
- Did the employee knowingly do anything to cause the termination?

If the county/district cannot prove misconduct, the case will probably be adjudicated as poor work performance (inability to do the job), and benefits will most likely be awarded to the claimant.
Lack of Work
Benefits virtually guaranteed

Job Eliminated
• No positions available

Reduced hours
• Full-time to Part-time

Job Offers and Refusals (???)
Critical factors to prevent undeserved benefits

- Written, effective County / District personnel policies
- Proper Documentation
- Disciplinary Action
Effective Personnel Policies

• Policies should be made available to all employees immediately upon hire.
• Obtain a signed acknowledgement of the receipt of the policy or employee handbook.
• When changes are made to policy, immediately make them available to all employees and obtain another signed acknowledgement.
Effective Personnel Policies, continued

• Policies should not be too vague (open to interpretation internally within your organization and the unemployment office) or too complicated (rendering them difficult to understand and administer).

• Policies should be consistently applied and enforced.

TIP: Counties and Districts who participate in the TAC Risk Management Pool Worker’s Comp program have a great resource in their HR Consultant, who can assist with reviewing personnel policies and provide supervisor training.
Effective Personnel Policies, continued

- Follow the policy exactly as it reads or it will not protect you.
- Policy violation should be related to final incident that caused termination.
- Design policies that adhere to Texas unemployment laws.
All counseling sessions and warnings should be documented in writing – even if only informal or verbal.

The document should be signed and dated by the individual issuing it.

Be sure to issue the document in a timely manner.

TIP: There’s no such thing as ‘too much’ documentation!
Document Availability

The claimant’s file, including all documentation, should be retained on-site in a secure location for at least 18 months for unemployment purposes.

Files need to be readily available for your staff members to ensure a timely response to claims.
The EEOC retention requirement is 300 days. Your county or district policy may require longer retention.

For information about retention requirements, contact the Texas State Library and Archives Commission.
Disciplinary Action

• Clearly document, in great detail, the events that led to it and what actions are being taken.

• Ensure that the disciplinary action being taken is in accordance with your county or district policy and/or prior disciplinary action.

• All disciplinary action should be administered by authorized personnel.
Disciplinary Action, continued

- If an investigation was conducted, be sure to clearly note who conducted it.
- Take immediate action – do not allow the employee to continue to work.
- An unsigned disciplinary action notice is still of value.
• As documents are created during the course of employment, keep in mind that many times the employer will have the burden of proof with the unemployment office.
• The scope of your documentation may extend beyond unemployment compensation to defend other charges (lawsuits, EEOC).
• Your organization may require it for other legal issues such as a discrimination suit.
Review: To win a claim requires ...

- Effective and consistently applied personnel policies
- Proper documentation
- Appropriate disciplinary action
Unemployment Hearing
Preparing for and Attending the Hearing
Hearing Notice: What Now?

Read instructions carefully

Put it on your calendar

Review employee documentation

Review claimant’s statement

Identify and prepare first hand witnesses

Get the complete file from TWC or TALX/Equifax
Importance of First-hand Testimony

- If the facts are in dispute, first-hand testimony is essential.

- Hearsay testimony is given less weight than first-hand, eye-witness testimony.
Expectations: At the Hearing

Environment
- Hearings are recorded
- Testimony is taken under oath
- Employer begins in discharge cases
- Employee begins in voluntary quit cases

Do's & Don't's
- Address the facts
- Only respond when asked
- Remain unemotional
- Rebut any claimant statements that are false
- Offer a closing statement that supports the reasons the claimant should be denied benefits
After The Hearing

Decision usually within two weeks.

Right to further appeal (for both parties):

Appealing party submits their written argument to the decision. No new evidence is taken.

Final recourse – Court of competent jurisdiction in county in which ex-employee resides.
### Recent Changes in State Unemployment Laws

<table>
<thead>
<tr>
<th>Bill</th>
<th>Effective Date</th>
<th>Description</th>
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<tbody>
<tr>
<td>HB 983</td>
<td>09-01-13</td>
<td>• Report wages for election officials or workers who are paid $1,000 or more per year</td>
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| HB 01537F  | 10-01-13                | • Requires timely response to a claim  
• Requires adequate response to a claim  
• Failure to respond in timely and adequate manner leaves employer liable for benefits, even when overturned on appeal |
| HB 3373    | 09-06-15                | • Base-period employer may contest benefits if claimant was discharged for misconduct or voluntarily quit without good cause connected with work |
TAC Staff Roles

Cynthia Brannen
Unemployment Fund
Program Specialist

Erin Crafton
Reporting Compliance
Specialist

- Administer the TAC Unemployment Fund
- Customer service for Unemployment Fund issues

TAC HR Consultants*

- Assist in answering employer questions when responding to unemployment claims
- Provide training in unemployment documentation
- Excellent resources for drafting and reviewing county and district policies

* Available to counties and districts who participate in the TAC Risk Management Pool Workers Comp program.
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