Unemployment and the Documentation Process

HR Consultant
Disclaimer

This training is designed to provide general information about the subject matter covered. Neither TAC nor the trainers are engaged in rendering legal advice. If you need legal advice, TAC recommends that you seek the services of a competent attorney who is familiar with your specific situation.
Unemployment

Worker loses job

Files Claim

Registers for work

State requests employment data
I added speaker notes to all slides. I am only making this one comment.

Michele Arseneau, 5/31/2016
Eligibility

Has employee worked in covered employment for sufficient time and wages?

Is physically able to work, available to work, and looking for work?

Become unemployed through no fault of their own?
Unemployment Claims Process

Separation → Claim → Protest

Hearing ← Appeal ← Determination

Decision ← Appeal ← Board of Review

*could take up to three years to conclude when multiple appeals are involved*
Base Period and Benefit Year

• State looks at the first 4 of the last 5 quarters of wages – this is the base period
• A new employee will not have wages in the base period for up to six weeks
• The sooner you know an employee is not right for you the less you will pay!
Texas

• Weekly Pay: Minimum $67/week Maximum $494/week

• Normally only liable for 26 weeks = $12,844
Disqualifications

The most effective way to reduce claims is to get disqualifications:

• Reduces benefits
• Can result in account not being charged
• Can result in credits after hearing determination
• Forces claimant into the labor market
• Can be helpful when defending other employee initiated causes
Disqualifications

Grounds for disqualification

- Quit without cause
- Discharge for misconduct connected with the work
- Refusal of suitable work
Disqualifications

To get a disqualification:

• Employees must be aware of employer’s policies and procedures

• Policies must be consistently applied and uniformly enforced

• Employees must be given a fair chance to meet these requirements
The only method of proof is:

Documentation
Documentation

Documentation is important because:

• State requires facts, not conclusions
• Claim may be filed a year after separation
• Employer must be able to prove misconduct
Tips on Documentation

Avoid words like “Attitude” and “Behavior”.

Use Verbs

Focus on what you want the employee to do.

Focus on what the employee does
Tips on Documenting

• State specifics like “argues with other co-workers”, “makes inappropriate jokes”...

• Avoid subjective phrases that are subject to interpretation and vague----these are indefensible:

✔ Don’t use: “maintain a positive attitude”
✔ Don’t use: “be a team player”, “need interpersonal skills”...
Disciplinary Forms

- Date of infraction
- Details of infraction
- Instructions for improvement
- Notice of next step
- Must state “job is in jeopardy”
- Employee must sign
Disciplinary Forms

• All counseling sessions and warnings must be in writing
• Do not procrastinate
• File must be available to provide to the state to successfully fight claim
Disciplinary Forms

- If an investigation was conducted, note who conducted it
- Take immediate action – do not allow employee to continue to work
- An unsigned discipline document still has value
Disciplinary Forms

• As documents are created, keep in mind in most cases the burden of proof is on employer

• The scope of your documentation may extend beyond unemployment

• Documents might help defend other lawsuits
Misconduct vs. Inability

• Poor work performance your fault not employees
• Must prove employee was capable at some point during employment
• Did he/she knowingly do anything to cause termination?
Quits

• Always get in writing
• Claims can be filed for up to a year
• Letter of resignation
• Reason for quitting
• Copy of exit interview
Refusal of Work

• Employer must prove work was offered
• Claimant may contend just cause for refusal
Refusal of Work

- Type of position offered
- Location of employment
- Rate of pay
- Starting date
- Manner offered – letter, phone
- Reason for refusal
Separation Issues

• Absenteeism – uncontrollable not disqualifying
• Part-time employee
• Mutual agreement – viewed as discharge
• Delayed for employer convenience
• Last infraction not serious
Hearings

• Formal proceeding
• Witnesses sworn in
• Record made
• Hearing officer leads questioning
• Interested parties may cross examine
• Testimony taken from witnesses with first hand knowledge
• Documentation entered as evidence
Hearings

Make sure you work with your HR department to help you prepare for hearings.
They have experience!
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