

## Unemployment 101

### Overview

Unemployment insurance provides employees, whose jobs have been terminated through no fault of their own, financial assistance for a given period of time or until they find a new job. Unemployment payments are intended to provide an unemployed employee time to find a new job equivalent to the one lost without financial distress adjustment.

The Department of Workforce Development makes a request for information, which is sent to our external unemployment agency, Thomas & Thorngren. T&T will send the information to the manager, and the manager will reply to T&T with information and supporting documentation. T&T will send all supportive documents to the Department of Workforce on behalf of Goodwill Industries.

The purpose of this module is to offer leaders a resource to best manage performance documentation, and increase personal knowledge on the unemployment process.

### Employee Vs Employer

When an employee files an unemployment claim, the first question that must be resolved by the state adjudicator is which party (employee or employer) initiated the separation.

- If the employee initiated the separation by quitting their employment, the burden of proof is on the employee to establish that they quit with good cause and they have pursued all available alternatives to quitting.
- If the employer has initiated the separation by discharging the employee, the burden of proof falls on the employer to prove misconduct under the employment law.
- It is important that documentation proves misconduct under Goodwill Industries Standard of Conduct and company policies.

### Guidelines to Protect the Employer

In order to be disqualified from receiving unemployment benefits, an employee must be able to prove that the employee was discharged for misconduct under the unemployment law.

Examples of Misconduct include the following ...

- Violations of Company Policy
- Insubordination
- Negligence

Examples that are **not** Misconduct include the following

- Inability to perform the job required to standards

- Isolated incidents of poor judgment

### Providing Supportive Documentation

It is important to provide substantial documentation that supports the specific details of what occurred to cause the employee's discharge.

#### Suggested Details

- What did the employee do to be discharged?
- How was it substantiated that this incident took place?
- How was the action against the policy?
- How did they know the policy?
- Has the employee been offered a warning?
- How and when were they were warned?
- Was the employee given the opportunity to improve?

It is important to remember that employees may have a very different outlook on the events that took place or even completely deny any wrongdoing, so the details are essential to proving misconduct.

### Example of Documentation

If you need to terminate someone's employment because of excessive unexcused absences, don't just write "discharged for absenteeism" on the unemployment claim report.

Instead, you need to say when the absences occurred, how many there were, and when prior warnings were given. You also need to say something about the final incident that led to dismissal.

You might say, "Jocelyn was absent from work without notice six times within two months. She received oral warnings after the first two absences, and written warnings after the second two. After the fifth absence Jocelyn was warned in writing that another such absence would lead to being fired. On May 17, Jocelyn failed to return to work following a scheduled vacation and was dismissed."

**Extra Tip-** *It is important to avoid the overuse of the phrase "unsatisfactory performance" Unsatisfactory Performance is often immediately read as "inability" by the unemployment agencies. If there are procedures in place that an employee fails to follow that resulted in lackluster performance, it is important to point to their failure to follow procedures as the triggering event that led to the discharge of the employee.*

### Voluntary Separation

Employees may choose to leave on their own. A voluntary separation is much easier from an employer's standpoint when an unemployment claim is filed because the employee has the burden of proof to

establish that they have quit with good cause and that they have pursued all available opportunities prior to quitting.

### Suggested Documentation for Voluntary Separation

- Although not always possible, when any employee quits, it is always best to have them provide a written letter of resignation.
- It is important to provide detailed information to refute any allegation of unfair treatment or a work-related concern.
- It is important to establish that all employees in the same position are treated uniformly.

### Unemployment Hearing

#### The Format

1. Depending on the case, you may be required to attend the hearing in person or participate by telephone.
  - Telephone Hearings – A phone number will be provided to by T&T you in advance of the hearing date.
2. Once the hearing Thomas & Thorngren will reach out to you with specific details.
  - T&T will advise you on what documents and witnesses to have available and the next steps for the hearing.

#### The Actual Hearing

1. Introductory Statements – The hearing will begin with Introductory Statements and identifying some items for record.
  - The Judge will identify who will be the main spokesperson for the company.
  - The spokesperson is the only person allowed to ask additional questions of your witness (if any) and cross examine the claimant.
  - The Judge will swear in everyone that will be testifying and inform you that the hearing is being recorded.
2. Testimony
  - The Judge will take testimony from the party that initiated the separation.
  - In a termination case the Judge will take the employer's testimony first since the employer initiated the separation.
  - In the case that there is a disagreement whether the claimant quit or was discharged, the employer will usually testify first.
3. Information Presented

The Judge will ask the following questions ...

- Dates of Employment, Job Title, Job Duties, and possibly their Rate of Pay.
- Questions regarding the separation- "What incident led to the claimant's termination?"

- Details of the policies that were violated by the claimant.
- Details on any prior warnings or issues involving the claimant.

Cross Examination - The Employer and Claimant have the opportunity to ask clarifying questions that will best illustrate your stance.

Tips during Cross Examination

- Do not interrupt during the claimant's testimony (It will be different than yours).
- Do not interrupt the Judge.
- Address the Judge with "Your Honor"
- Questions are not necessary, however if you do have questions that you feel will shed additional light on the separation, this is your opportunity.

### Common Mistake Made by Employers

Employers try to prove that the claimant was discharged for cause or for good business reason.

- The employer must prove that the claimant was discharged for misconduct in connection to work.
- It is critical to address how the claimant was aware that their actions could result in their discharge, the employee was given an opportunity to improve, and that the incident that caused the separation was within their control.

### Closing Statements

Once all testimony from both sides has been gathered, the Judge will give both sides the chance to make a closing statement.

- The closing statement is not necessary since the decision will be based on the testimony already provided.
- If you feel like you would like to make a closing note, the statement will need to be brief.

### ***Example***

" Based on the evidence and testimony provided, we feel that the record will show that the claimant was discharged for misconduct in connection with the work (or quit without good cause in connection with the work) and therefore should be found disqualified for unemployment."