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UNEMPLOYMENT TIPS NEWSLETTER

May 2010

Best Practices for Unemployment Hearings

The unemployment claims process is generally divided up into three levels - the initial claim, the unemployment hearing, and the board of review. This month's tip will focus on the unemployment hearing, and best practices to prevail at the hearing level.

The best practice and approach to prevailing at an unemployment hearing actually occurs at the initial claim level. That is, it is best to always respond completely and with as much detail as possible to the initial request for separation information, making our best effort to win at the initial level, and avoiding an unemployment hearing all together. However, despite best efforts, there will be the occasional unemployment hearing that an employer will need to participate in, as either party (claimant or employer) who loses at the initial level can appeal to a hearing. Many unemployment hearings are conducted via telephone - though sometimes in-person participation will be required. The hearing notice will indicate whether it is an in-person or telephone hearing. It will also outline detailed instructions on how to participate with witnesses, how to submit documents, call in instructions, and/or location information, etc. Make sure to review the notice for any special procedures and requirements. Employers Edge will provide hearing representation services, and we will manage these details on its customer's behalf.

The first decision an employer needs to make regarding the unemployment hearing is to identify who should attend the hearing. The best witness will be the individual(s) with the most firsthand knowledge concerning the separation, such as the claimant's manager or supervisor. Although certain other individuals may have knowledge of the circumstances regarding an employee's separation, greater weight or credibility will be given to those individuals with firsthand knowledge. Secondhand testimony, also known as hearsay testimony, will not be given much credence when a former employee provides a firsthand account and interpretation of the reason for separation.

When preparing for a hearing, be sure to gather all relevant documents pertaining to the separation (disciplinary records, policy statements, handbooks, witness statements, attendance records, etc.). Ideally many of these documents were available and submitted at the initial protest level, but if not, it is imperative to have them for the hearing. Copies will generally need to be provided ahead of time to the hearing officer and all parties listed on the hearing notice. Failure to do so may result in the hearing officer disallowing the documents to be considered as evidence to the separation. When Employers Edge is providing representation services, the nature, availability, and distribution of these documents will be coordinated by the hearing representative, and will be discussed when we hold a pre-hearing call with the witnesses to prepare for the hearing.

The unemployment hearing is a fact-finding process. It is not a trial; therefore you do not have all the formalities of a courtroom. A state assigned hearing officer (also referred to in some states as an administrative law judge) will facilitate the proceeding. Witnesses will be sworn to "tell the truth" and

documents can be entered as evidence. There are five basic questions the hearing officer will ask at each hearing - dates of employment, job title/description, rate of pay, days/hours worked, and reason for separation (i.e. discharge/termination or voluntary quit). Once these questions have been asked and answered, the hearing will continue with questioning about the specific reason(s) why the employee is no longer employed. Both the employer and former employee will have an opportunity to testify. When the hearing officer has finished with his/her questioning, they will allow each party to cross examine the other. When we provide a hearing representative, our representative will cross examine the claimant on the employer's behalf. Otherwise, employers should take notes during the former employee's testimony to help with any rebuttal statements and/or questioning.

After the hearing, the hearing officer will issue a written decision to the employer and former employee (claimant). The decision should be grounded in the core principle of unemployment insurance system, and that is a determination as to whether the employee became separated "through no fault of their own." This decision will outline the reasoning behind the hearing officer's decision to grant or deny unemployment benefits. Usually, the decisions will cite the specific state statute that supports their conclusions.