



Ohio Unemployment Compensation An Overview and Tips for Opposing Improper Claims

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The purpose of unemployment compensation is to provide funds to workers during periods of unemployment. Benefits are to be paid only where the individual's unemployment is not his or her fault and he or she is ready, willing and able to secure other employment. Employees discharged for just cause, who quit without just cause or those employees who do not act in the employer's best interest, are not eligible for unemployment compensation.

Employers typically expect to see former employees file applications for unemployment compensation when the employee was let go as a part of a reduction in force or lack of work. Unfortunately, employees who are terminated because of excessive absenteeism, poor performance or even disciplinary issues increasingly are filing applications for unemployment compensation. Because employees in Ohio now can be entitled to up to 79 weeks of unemployment compensation, improper awards pose significant financial consequences for the employer. This article provides an overview of the unemployment compensation process, and guidance on how employers can defend applications filed by employees who should not be entitled to such compensation.

The Unemployment Compensation Process

A claimant must file an application for unemployment compensation with the Ohio Department of Job and Family Services (ODJFS). Most applications

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for unemployment benefits are filed online. The director of ODJFS will advise the claimant's last employer of the receipt of the application, and seek information regarding the reason for his or her separation, wages earned, length of employment and any other necessary information. The director will make an initial determination on whether the claimant is eligible for benefits. The claimant or employer will have 21 days after the initial determination to appeal the director's decision and explain the reasons that the determination should be reversed. Either party is permitted to submit new or additional evidence to the director. The director then will issue a redetermination on whether the claimant is entitled to benefits.

The parties then have another 21 days to appeal the director's redetermination. If an appeal is filed, the file will be transferred to the Unemployment Compensation Review Commission (UCRC) and an administrative hearing will be scheduled. Because the UCRC's docket has been busy, its current practice is to schedule a telephone hearing, holding in person hearings only upon request. In either case, the hearings are conducted by a hearing officer, who will place witnesses under oath and record a transcript of the hearing. Telephone hearings are strictly limited to 45 minutes; in person hearings may be of a longer duration. Typically, the initial questioning is handled by the hearing officer, although the parties and their attorneys subsequently will be permitted to ask additional questions of the respective witnesses and introduce evidence.

The decision of the hearing officer will become final unless one of the parties appeals to the full Review Commission, which will review the evidence and affirm or reverse the hearing officer's decision, or remand the matter to another hearing officer for further proceedings. If the Review Commission does not grant the relief requested, the non-prevailing party may file an appeal in the court of common pleas within 30 days. A reviewing court only may overturn the decision of a hearing officer or the Review Commission if it is unlawful, unreasonable or against the manifest weight of evidence.

Opposing an Application for Unemployment Benefits

The most effective measures an employer can take regarding unemployment compensation are preventative measures. The importance of having clear, unambiguous employment policies that give employers ample discretion when administering discipline cannot be understated. Effective and well administered policies place employees on notice of the consequences of certain behavior. Often, unemployment compensation is granted, even in the face of obviously wrongful employee conduct, because the employer did not adequately communicate its expectations to the employee in writing. This argument dissipates if the proper employment policies are in place.

The other essential preventative measure for employers is documentation. It is vital that employers document all disciplinary encounters with employees, including verbal counseling. Similarly, performance evaluations must be accurate and reflect the employee's true performance. Employers must train supervisors not to "sugar coat" discipline on performance evaluations, as such documentation later may contradict the employer's contention that the employee was terminated justly. Finally, employers must communicate performance or disciplinary issues to employees as the incidents occur. Notes to an employee's file of disciplinary problems, without employee counseling or notification, generally are not considered compelling evidence when introduced during the unemployment process.

When faced with notice from the director of ODJFS that a former employee has filed an application for unemployment compensation, the employer must be vigilant in every response it gives the director because all responses will be made a part of the record. All events leading to the employee's discharge must be described carefully and documented. Often, employers will list only the final disciplinary incident that led to the employee's discharge. Not giving ODJFS the complete disciplinary history of the employee during the initial stage of the application process will give the appearance of an inconsistent version of events if more evidence of the employee's disciplinary history is disclosed later in the process. Employers also must be cognizant of the strict timeframes for responding to requests for information and requesting appeals, as late submissions will not be considered.

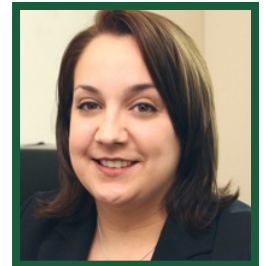
If the matter eventually is referred for hearing, the employer must be sure to consider the big picture. Is it possible the former employee will file a grievance, charge of discrimination, harassment, retaliation or a wage and hour complaint? If so, the employer should weigh carefully the risks and benefits of proceeding to the evidentiary hearing and be vigilant about its written responses to ODJFS inquiries. The employer also should consider retaining legal counsel as early in the process as possible so the proper strategy for avoiding other litigation can be implemented. Although unemployment hearing transcripts are not to be used for any other purpose, claimants and their attorneys sometimes use the hearing to gain additional information or admissions from an unsuspecting and unrepresented employer. The hearings also present an opportunity for the employer to illicit testimony from the employee concerning the circumstances surrounding the termination of his or her employment. If that version of events changes over time, the initial testimony from the employee may prove useful for impeachment purposes.

Because these hearings are scheduled with little notice, preparation time is limited. Requests for a full copy of the UCRC file should be made immediately. If subpoenas for witnesses or documents are necessary, the requests should be made shortly after the initial notice is received. If a telephone hearing is scheduled, the UCRC requires that exhibits be identified and submitted to the UCRC and the opposing party in advance of the hearing. Witnesses should be interviewed and prepared to testify. If the employer is represented by counsel, the attorney must enter an appearance with the UCRC and be given adequate time to prepare. Employers should be aware that continuances of hearings are not granted readily, so often employers and their counsel must have adequate time to clear their schedules to accommodate the hearing.

Although the unemployment compensation process may appear daunting, with adequate preparation employers will be able to effectively mitigate financial losses due to improper claims. Employers should contact legal counsel if they have questions at any point during the process.



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