

Update: April 2010

# Unemployment Update

## The Unemployment Hearing – Critical Guidance

Many employers today are facing substantial increases in unemployment costs. They are not only experiencing a large volume of unemployment claims filed, they are also managing record level claimant appeals and unemployment hearings. In this environment a strong unemployment claims management program and a well orchestrated approach to reviewing unfavorable decisions and preparation for unemployment hearings is critical. The information provided below will help employers become more familiar with the hearing process and achieve more favorable results.

### Notice of Hearing

The state unemployment office will provide all employers written notification by mail regarding upcoming hearings. The information will provide details surrounding the date, time and former employee involved. The employer should follow all instructions exactly or they may be precluded from participating in the hearing. Also, note whether the hearing is in-person or via telephone. Remember to be very familiar with the specific case, state instructions and protocols.

### Preparing Your Case

Pull all related documents and interview everyone involved to obtain all details and specifics surrounding the employee separation. The saying, "if it isn't documented, then it didn't happen" is very true in the unemployment insurance arena. Written policies, procedures, acknowledgments and warnings are among critical documents that can help prove your case.

In telephone hearings the employer will most likely be required to mail proposed exhibits to the hearing officer and to the claimant in advance of the hearing. For in-person hearings, the employer will probably be required to bring additional copies of any "exhibits" for all those participating. Failure to comply with hearing instructions as it relates to documentation could result in documents not being admitted into evidence.

Who has the burden of proof? For involuntary separations, the employer will need to show that the employee knowingly and willfully violated the company policy that led to the discharge. For voluntary separations, or quits, the employee has the burden of proof and must prove they left the employer for compelling reasons.

### At The Hearing

First hand testimony is critical. The best person to testify at a hearing is one with personal, first-hand knowledge. While some states will permit hearsay testimony and accept notarized statements from non-appearing witnesses, this type of information is never sufficient to overcome direct, first-hand testimony from either the claimant or the claimant's witnesses.

The credibility established by either party will greatly influence the outcome. When presenting evidence, always remain in control and unemotional, answer all questions directly and do not speak out of turn. If given the opportunity, convey the primary reasons benefits should not be granted.

Through proper documentation and preparation, employers can ensure better results and reduce unemployment tax costs.

TALX's experience, expertise, and proven results help employers navigate the uncertainty of the unemployment insurance system. For additional information regarding this article or other proactive unemployment cost management techniques, please contact Pete Krieshok at 314-214-7325, or by e-mail at [pkrieshok@talx.com](mailto:pkrieshok@talx.com).