

Update: October 2010

## Unemployment Update

### Use of Unemployment Evidence in Other Jurisdictions

Many employers may be unaware, but information and testimony presented in response to an unemployment case may affect you in other legal proceedings involving the same claimant. For this reason, it can be important to keep strictly to the facts and to make certain you are aware of any other legal activities that may be under way for each former employee.

#### Collateral Estoppel

Through the legal principle of "collateral estoppel", some state law may consider evidence established by either party in an unemployment case to be admissible as previously-established facts. This means that if a former employee who filed for unemployment has also filed a legal case against your company, what is discussed and decided throughout the unemployment process may be accepted as fact in the other case as well.

What this means to you, is that – in some cases – an unemployment hearing may be your last opportunity to present certain evidence related to certain issues and facts. If an unemployment hearings officer rules that you have not proven or established that the claimant in fact violated the policy you have alleged, or if they find that the claimant quit their employment with cause attributable to the employer, these facts and the surrounding testimony may be admitted as beyond dispute in a subsequent proceeding.

#### Saving Testimony

Collateral Estoppel only applies if testimony has been given and a decision has already been rendered. It also only applies in certain states. But regardless of this specific doctrine, almost any statement under oath can be called into question in the future in another venue. For this reason, some employers may – at their discretion – decide to reserve certain testimony and opt not to send some key witnesses to an unemployment proceeding. In such cases, the employer may feel that unemployment benefits are less of an impact than the potential outcome of other proceedings that will take place in different venue. If specific witnesses do not provide testimony in the unemployment case, their testimony can be offered only under the other venue.

#### Variation by State

As with many other components of the unemployment process, the admissibility of evidence in accordance with the principle of collateral estoppel varies from state to state, so be certain to assess sensitive employment situations in advance and always attempt to determine how the state in question will view unemployment decisions and facts in relation to other venues. In most situations, it is recommended that you seek legal advice before key decisions are made.

#### Documentation

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).