Unemployment Insurance: How to Reduce Employer Liability for Unemployment Insurance Claims

Updated November 2015
TOPICS
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Rules Governing Unemployment Insurance

What Employer Need to Know: Discharge vs Quit

eResponse

Hearings and Appeals
Understanding the Rules Governing Unemployment Insurance Benefits

Utah Employment Security Act - Utah Code Section 35A-4-101 through 35A-4-508

State Administrative Rules - Utah Admin. Code R994-102 through R994-508

Unemployment Law and Rules - jobs.utah.gov/appeals
What Employers Need to Know

Discharge vs. Quit

Claimants are denied benefits when:

“Just cause” is shown for discharges, and...

“Good cause” is not shown when an employee quits.
Knowledge

- Company / Employee Manuals
- Company Policy
- Operational Manuals
- Worker Instructions
- Standard Operating Procedures
- The Opposite of Knowledge
  - Condoning rule violations
  - Assuming the employee knows
  - Unclear instructions / expectations
Culpability

Seriousness of conduct or severity of offense as it affects the continuance of employment

Questions to ask yourself…
- Impact
- Objectionable
- Isolated

Utah Appellate Courts & Culpability:

Isolated Instance of Poor Judgment:
The Utah Supreme Court called for a liberal construction of the Utah Employment Security Act:

“Mere inefficiency or failure of good performance as the result of inability or incapacity, inadvertence, isolated instance of ordinary negligence, or good faith errors in judgment or decisions do not constitute culpable conduct which precludes a discharged employee from receiving unemployment compensation benefits.”
Quit or Discharge?

Unemployment Insurance Benefits will be **Denied** if the Person Voluntarily Quits Without “Good Cause”

**Employee gives two-week notice:**
- Employer accepts and asks employee to leave that day
- Employer accepts and pays for two more weeks, but asks employee to leave that day
Provide ALL Requested Information to DWS within time limits to avoid:

- Denial of relief of charges
- Overpayments
- Denial of appeal rights
- Appeal hearings
What is eResponse?

eResponse is an electronic means to respond to separation requests to help the department to accurately determine your benefit costs.
eResponse continued

Benefits of using eResponse:
• Secure, electronic format in which you can respond to unemployment insurance (UI) separation requests
• You can attach documentation when needed, and receive a date-stamped confirmation of receipt
• Electronic format reduces follow-up calls, streamlines the response process and reduces paperwork
• Faster claim responses lead to more accurate initial eligibility decisions, which help keep employer benefit costs down
eResponse continued

Needed Information:
- Federal Employer Identification Number (FEIN)
- State Employer Identification Number (SEIN)
- Personal Identification Number (PIN)

Access SIDES eResponse from:
- https://jobs.utah.gov/ui/employer or
- http://uisides.org
eResponse continued

[Link: jobs.utah.gov/ui/employer] and sign up for eResponse today. Click “File a Form 606 (eResponse)”
eResponse continued

Sign in or create a new account

Once signed in, click “Add Employer”
eResponse continued

Use Employer ID, Document # or Access Code

Sign up for eResponse only or include Electronic Correspondence
New claims will be available on eResponse – current claims are competed by mail or fax.

The number of claims to fill out display on this screen.
Welcome to the E-Response Website
for the
Unemployment Insurance State Information Data Exchange System

Please select the application you want to use:
- Notice of UI Claim Filing:
  - Separation Information
  - Wages Reported and Possible Charges
  - Determinations and Decisions
  - Earnings Verification

Select
eResponse from SIDES
Sample Separation Information Request Screen

<table>
<thead>
<tr>
<th>SSN</th>
<th>Name</th>
<th>Response Status</th>
<th>Date Due</th>
<th>Create Response</th>
<th>View/Print</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>Not Started</td>
<td>11:59 PM Eastern on 12/24/2011</td>
<td>Create Response</td>
<td></td>
</tr>
</tbody>
</table>

No separation requests found for other PINs.
Utah Code Sec. 35A-4-403

(1)(e)(ii) If an employer fails to furnish reports concerning separation and employment as required by this chapter and rules adopted under this chapter, the division shall, on the basis of information it obtains, determine the eligibility and insured status of an individual affected by that failure and the employer is not considered to be an interested party to any such determination.
File Your Appeal Timely

Within 15 days of decision

Good Cause

Continuing Jurisdiction
Hearings and Appeals

What is a Hearing?:

- Fact Finding Meeting
- Determines if Decisions were made Correctly
- Determines Benefit Cost Liability

Preparing for a Hearing:

- Be available for call / un-interrupted time
- Have all necessary evidence in front of you
- Take notes if you choose to cross examine
Hearings and Appeals continued

- Review Records
- Arrange for Witnesses
- Note Date and Time of Hearing
- Review Special Instructions
- Requirements Will be Sent
- Rescheduling Required PRIOR to Hearing
The Notice of Hearing will list all the sections of the Utah Employment Security Act which may be considered at the hearing.

Rules are published explaining the elements of the law which must be established by evidence at the hearing.

(See jobs.utah.gov/appeals for links to rules)
Hearings and Appeals continued

Written responses if raising new factual information

Ex Parte Communication is prohibited

Contact regarding procedural matters is allowed

Pre-file documents you want to present as evidence

Meet your Burden of Proof

Request subpoenas for witnesses, when needed (call Appeals office to request)

There is only ONE hearing – prepare for only one!
The ALJs are neutral independent fact finders. They have the responsibility to obtain the evidence necessary to make the correct decisions. Evidence needs to be presented in the hearing on which the ALJ will base the findings and rulings.
Hearings and Appeals
Presenting Evidence and Witnesses

- Discuss witness testimony before the hearing
- Notify ALJ if you need more than 30 minutes to present
- Report on time for the hearing
- Have witnesses with first hand information present
- Don’t rely on hearsay evidence
- Bring a witness to explain how documents were prepared
Hearings and Appeals
Tips for an Effective Hearing

- Summarize documents
- Avoid asking leading questions
- Witness testimony
- Explain technical terms/jargon
- Cross-examine appropriately
- Don’t interrupt others testifying
Hearings and Appeals
Work with the ALJ
(Administrative Law Judge)

- Provide rules to ALJ on your employment decisions
- Ask the ALJ for help
- Asking for reconsideration
Hearings and Appeals
Appeals Process

- Initial Department Decision
- Appeal before an Administrative Law Judge
- Workforce Appeals Board
- Utah Court of Appeals
- Utah Supreme Court
- U.S. Supreme Court
Recommendations for Controlling Costs

Screen job applicants and check references
Provide clear job & performance expectations
Monitor new employees carefully
Dismiss unsuitable employees on “probation”
Keep accurate records of all rules violations
Document, document, document
Recommendations for Controlling Costs continued

Be consistent with disciplinary actions

Offer jobs to laid off employees

Conduct exit interviews

Report job refusals to DWS (801-526-4400), Option 4
Questions or Comments

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