

Riding the Gravy Train

Unemployment Insurance: Part 2

By Lesley Sifers, Tax Favored Benefits, Inc.

In the November issue, I discussed unemployment insurance and hopefully, you now recognize that this is a complex system. There is a great deal of variance between the states and those of you with multi-state operations should, rightly so, be scratching your heads in confusion.

Let's take a look at how the system works - in MOST states.

A typical unemployment claim proceeds as follows:

1. Former employee files a claim - in some states, this can be done by phone or on the Internet.
2. State unemployment office makes an initial determination of eligibility.
3. State unemployment office contacts employer by mail or, in some states, by telephone.
4. Employer states or files initial response to claim - which can be a protest.
5. If claim is disputed, both parties submit relevant forms and documents.
6. State unemployment office makes secondary determination.
7. If either party disagrees with this determination, they can request an unemployment hearing, usually before an Administrative Law Judge (ALJ).
8. If the matter is still unresolved, either party can take the claim to state court.

I often hear, "How can they file for unemployment when they quit?"

The short answer is that anyone can file for unemployment if they are unemployed. The initial eligibility determination by the state (Step 2) is a form of triage. As discussed last month, the person 1) must have earned a certain amount during a specified period and 2) must be available for work. If those criteria are not met, the person isn't eligible for benefits.

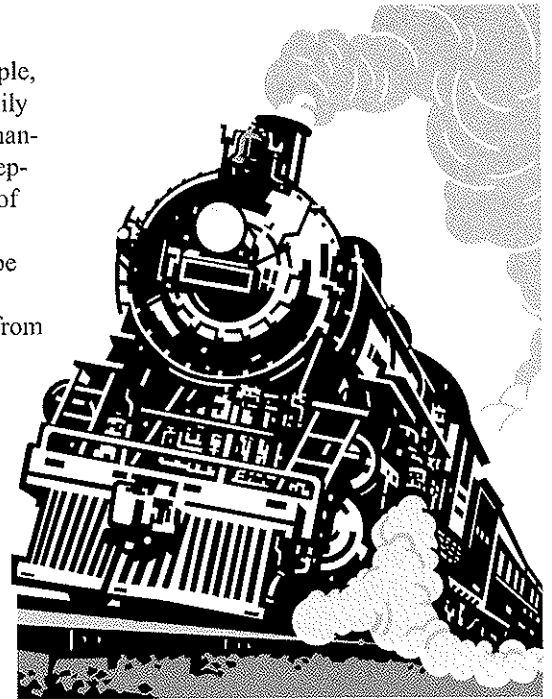
It is true that if a person quits they are, generally, ineligible for benefits. However, there are exceptions if the per-

son quit for "good cause." For example, in Iowa, illness in the immediate family is considered good cause. So is pregnancy. Many states have good cause exceptions if there is a documented threat of domestic violence in the workplace. Other good reasons for quitting can be related to an employer's actions, for example, reducing someone's hours from 40 to 20 a week.

Occasionally, the claim is made that working conditions were so offensive the person was forced to quit. Those are the types of claims often heard before the ALJ. In such a case, the person must be able to prove that a "reasonable person" would have quit. To meet the "reasonable person" standard, the situation cannot be intolerable to just that one person; it has to be so bad that "most" people would feel compelled to leave. It's a tough thing for an employee to prove.

It remains imperative that you prepare to be contacted by the unemployment office (Step 3). When someone leaves, for any reason, document it. If they resign, get a letter of resignation. If you fire them, get your ducks in a row. The unemployment office will ask for basics (dates of employment, job title, rate of pay) for comparison to information the claimant provided. They will ask for your version of the separation. Present your case calmly without adding any information you may have learned after the employee's departure. Whatever you do, respond to that initial contact from the unemployment office. This is your first opportunity to protest the claim. The biggest mistakes you can make are not returning unemployment forms or requested documents and not returning phone calls from the unemployment office in a timely manner. Failure to respond means you forfeit any future opportunity to protest the claim.

The unemployment office reviews all information gathered to this point and makes a determination as to whether or

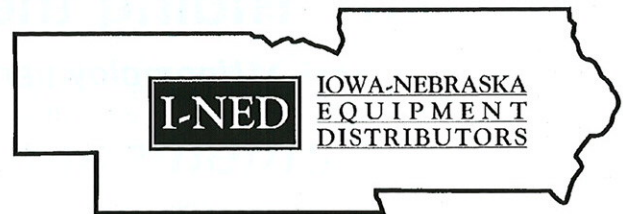


not benefits will be awarded. They also determine if the claim will be charged to your account, thereby affecting your experience rating. Your real goal is not so much to prevent the claimant from getting benefits, but to prevent those benefits from being charged to your account.

If benefits are awarded and charged to you, and you sincerely believe it is worth the time and effort, request a hearing. The hearing may be in person before an ALJ or by telephone conference call. Be well prepared. Have your documentation in good order and anticipate, to the best of your ability, what the former employee's argument(s) might be.

Admittedly, it is more difficult to avoid claims when you discharge someone. However, if you do your job documenting the reasons for the discharge, you have a chance. For example, absenteeism (if it's not for illness) is a good reason to fire someone and the unemployment office often agrees. Discharging someone who doesn't have the skills to do the job is a smart decision, but the unemployment

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office probably won't deny a claim in that circumstance.

Implementing a probationary period, and using it properly, is one way to help control unemployment costs. If you decide to terminate an employee, the sooner you take action, the better. The cost for any unemployment claim would be divided up, pro rata, between all employers in the base period. Charges to your account could

be reduced.

In my opinion, concerns about unemployment claims are often more emotional than realistic. I get the impression, sometimes, that employers think people are just waiting for their chance to get money for not working. In reality, most states make it more difficult than you think and, once receiving benefits, there are strings attached. Even if you live in Iowa and have four dependents, that \$398.00 a week is only \$9.95 an hour – plus, it's taxable income.

As long as you don't go running about

firing people just because you can or deciding to have a mass layoff every time business gets a bit slow, your rates should remain stable. Plus, if you stand up for yourself in those occasional situations when someone files a bogus claim and you prevail, you protect your experience rating.

Thank you for reading this article. If you have questions or comments, please contact me at Lesley@taxfavoredbenefits.com or the HR Help Line at 800-683-3440. Have a wonderful holiday! ■