

Unemployment Hearings – Trends and Tips

Delaware Valley Labor and Employment Law Conference

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PA UNEMPLOYMENT COMPENSATION – A PRIMER

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STEPS IN THE UNEMPLOYMENT PROCESS

- Employee files a claim and receives a notice of financial eligibility (Form UC-44F)
- Qualification for benefits – unemployment or reduced hours through no fault of the employee
- Disqualifications for benefits:
 - Voluntary quit without cause of compelling nature
 - Discharge or suspension for willful misconduct
 - Discharge or suspension for failure to submit to or pass a drug or alcohol test
 - Work stoppage determined to be a strike
- Employee must maintain eligibility for benefits

WILLFUL MISCONDUCT

- An act of wanton or willful disregard of the employer's interests
- Deliberate violation of rules
- Disregard of standards of behavior that an employer can rightfully expect from an employee
- Negligence that manifests culpability, wrongful intent, evil design, or intentional and substantial disregard of the employer's interests or of the employee's duties and obligations

DISQUALIFICATION?

- Violation of attendance policy
 - True
 - False

DISQUALIFICATION?

- Falsification of time records
 - True
 - False

DISQUALIFICATION?

- Violation of harassment policy
 - True
 - False

DISQUALIFICATION?

- Resignation
 - True
 - False

THE CONTESTED HEARING

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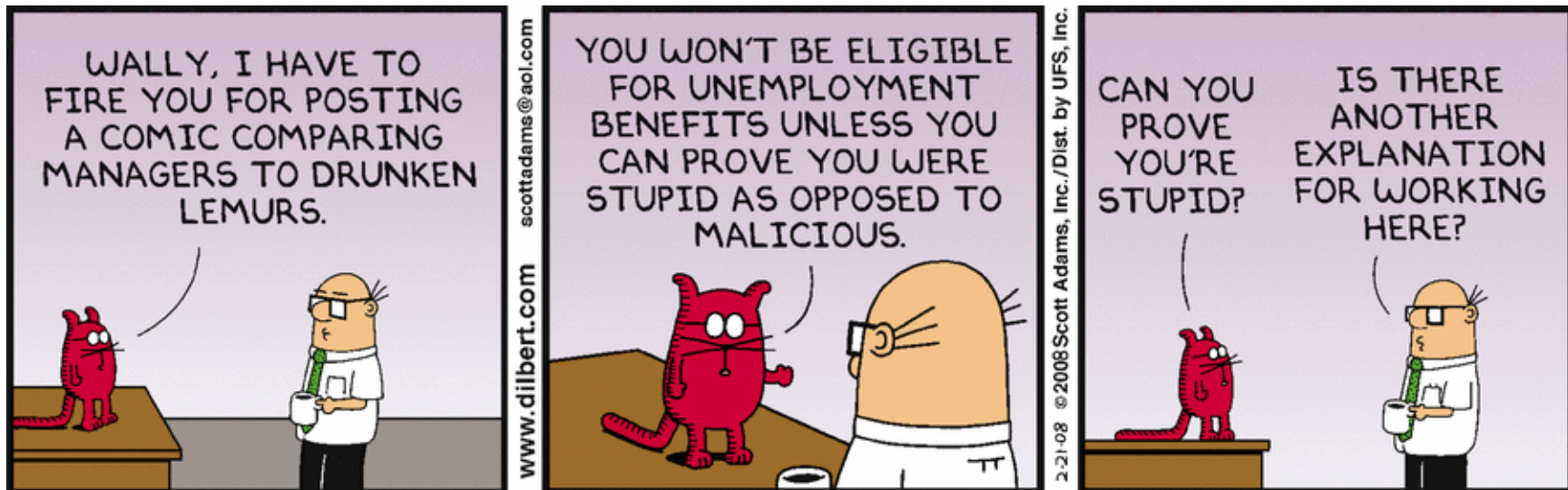
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THE CONTESTED UC PROCESS

- Submission of claim by employee
- Submission of information by employer as requested
- Determination by UC whether to grant benefits
- Either employer or employee can appeal
- Short time deadline and limited exceptions if you miss the deadline
- Referee will provide you with notice of the hearing date – usually within 30 days of the denial
 - Must present all your evidence supporting your position because this will be the only opportunity

THE CONTESTED UC PROCESS

- Employer bears the burden of proof
 - Employee bears the burden of providing a good cause reason for voluntary quit
 - Employer then bears the burden



- Keep in mind, not contesting an unemployment claim won't prevent you later from showing you fired the employee for a legitimate reason

LEVELS OF APPEAL

- Initial determination by the Department
- Appeal to UC Referee
 - 15 days
- Appeal from Referee to UC Board of Review
 - 15 days
- Appeal from the Board of Review to the Commonwealth Court
 - 30 days from the date of mailing of decision

WHAT TO BRING TO THE CONTESTED HEARING

- What was the reason for termination?
 - All policies that relate to the reason for termination
 - Evidence that employee knew of the policy
 - Policy or handbook receipts
 - Testimony of pertinent discussion
 - All employee warnings or notices relating to termination
 - Witnesses – decision-makers – to testify about the events giving rise to termination

COMPETENCY OF EVIDENCE

- Will the Hearing Referee require evidence to be presented in the same way as in court?
 - True
 - False

USE OF THE CONTESTED PROCESS IN CIVIL LAWSUITS

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ATTORNEYS WHO REPRESENT EMPLOYEES AND THE UC PROCESS

- Employee attorneys are using the UC hearing process to support civil lawsuits
- Use sworn testimony under oath
 - Testimony given at the contest hearing is under oath
 - Failure to give testimony on a key point may preclude raising it later
 - Sworn testimony can be used in civil lawsuits
 - Depositions
 - Court hearings
 - Inconsistencies can be used to impeach (affect your credibility)
- Employee may raise unexpected issues at the hearing
- Hearing decision as evidence

SURPRISE – CLASSIFICATION IS AN ISSUE

Facts

- Independent contractor worked with your organization
- Company decided to end the independent contractor relationship
- Independent contractor files for unemployment benefits
- Company thinks this is a non-issue
 - Only employees eligible for benefits
- Go to the contested hearing unprepared to address the legal issues and facts that give rise to a finding of employee vs. independent contractor

DEMONSTRATION



AND THE CONSEQUENCES

- Sworn testimony adverse to company that makes it likely a finding will be the individual is an employee vs. independent contractor
- Unemployment benefits awarded
- Now the employer may be fined for not contributing taxes, social security, state disability and unemployment contributions
- Exposure on not offering employee group benefits
 - Health
 - 401 (k)
 - Paid vacation or sick time

SURPRISE – IT’S A CONSTRUCTIVE DISCHARGE AND SEX HARASSMENT CLAIM

Facts

- Employee resigned without providing a reason
- Employee filed for unemployment benefits
- HR witness comes to hearing prepared with the voluntary resignation letter
 - Slam dunk, right?
- At hearing, employee presents evidence that she was sexually harassed by her boss
 - Requests for sexual favors
 - Inappropriate texts on cell phone
 - Reported to a manager – but no investigation done
 - Other employees who reported were terminated or not believed

DEMONSTRATION



CONSEQUENCES

- Unemployment benefits awarded
- Unprepared testimony under oath by HR
 - Admissions of aware of prior complaints
 - Admissions that the other employee was discharged
 - Admissions that no investigation for this employee was done
- Worst case, finding that the employer did not have an effective complaint, investigation and remediation policy

SURPRISE – IT’S AN OVERTIME AND RETALIATION CLAIM

Facts

- Employee was classified as an exempt employee
- Employee was terminated for repeated absenteeism and not completing work
- HR comes prepared with documents of warnings on both issues
- Supervisor testifies about both absenteeism and not meeting work requirements: refused to stay late when job not completed
- Employee testifies that she objected to her supervisor about not receiving OT for staying late
- Employee says she was taking “comp days” when she had to work on a Saturday and didn’t get paid
- Employee’s attorney elicits testimony from HR and supervisor that questions whether the classification was correct

DEMONSTRATION



CONSEQUENCES

- Benefits awarded
- Finding of misclassification
- Exposure for unpaid OT
- Exposure for retaliation claim – termination closely followed complaint of wage concerns

TIPS AND STRATEGIES

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CHECKLIST FOR BEST PRACTICES

- Before objecting to unemployment benefits, consider
 - Why was the employee terminated
 - Do you have strong or weak documentation
 - Do you have good witnesses to tell your story
 - What work rules or policies were involved
 - How was employee made aware of policies
 - Were other employees terminated or disciplined for engaging in same conduct
 - Are there any extraneous circumstances that are problematic
 - Does the employee have an attorney

MORE TIPS

- Termination decision
 - What was communicated to the employee about the reason
 - Is the documentation consistent with the reason provided
 - If the documentation reflecting the rationale doesn't match the communication to the employee – there is a problem
 - Some managers like to “soften the blow” and provide an ambiguous reason or no reason (ex: lay off)

ADVERSE CONSEQUENCES IN CIVIL ACTIONS

- Some courts have ruled that testimony showing inconsistent reasons for termination was enough to defeat the employer's motion for summary judgment
 - It created an issue of fact
 - Was the reason for termination a pretext to mask the real reason for termination (discrimination, retaliation)

QUESTIONS?



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THANK YOU

Legal Disclaimer: This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.

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