



Fraudulent Unemployment Claims

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Agenda

1. Subject Employers
2. Qualifications for Unemployment Compensation Benefits
3. Disqualifications for Unemployment Compensation Benefits
4. Constructive Quit
5. Review Process of Unemployment Compensation Claims
6. Employee or Independent Contractor
7. Questions

Subject Employers

Part 1, Chapter 3, Article 3

- Section 675: Any employer that had at least 1 employee in the current or preceding year and pays more than \$100 in wages in a calendar quarter.
- Section 682: Any employer whose employees do domestic service and pays more than \$1000 in wages in a calendar quarter.

Qualifications for Unemployment Compensation Benefits

Section 1253: To be eligible for UI benefits, the claimant must:

- Make a claim for benefits in accordance with regulations.
- Registered for work at a public employment office.
- Be able and available for work.
- Unemployed for a waiting period of 1 week.
- Be actively seeking work on their own behalf.
- Participate in reemployment activities, like orientation and assessment, if they are identified as likely to exhaust regular unemployment benefits

Disqualifications for Unemployment Compensation Benefits

Section 1256: Claimant may be ineligible for UI benefits if the claimant:

- Was discharged for misconduct connected to their work; proof of misconduct rests with the employer.
- Voluntarily quit without “good cause.”
- A claimant is *presumed* to have been discharged for reasons other than misconduct or left with good cause.
- The employer has burden of showing that the claimant was fired for misconduct or left without good cause.

Section 1257: Claimant will be disqualified for UI benefits for a period of time if the claimant:

- Made false statements or withheld information for the purpose of receiving UI benefits.
- Without good cause, refused suitable employment without good cause or failed to apply for suitable employment when notified by public employment office.

Example: Appeals Board Decision P-B-078

- Lyle had pre-existing back trouble when he was first hired as checker at a grocery store.
- He specifically denied any physical handicaps on the application form, and denied he had any foot or back trouble. He knew that he probably wouldn't be hired if he disclosed his back issues.
- Lyle trained for a week and worked for two days before he quit because his back was hurting. To avoid embarrassment, Lyle told the store he was quitting because he didn't like the work.
- Lyle's misstatement constituted fraud, and the fraud voided the employment contract.
- The fraud negated what would otherwise be considered good cause for leaving work under Sections 1256.

“Good Cause” for Voluntarily Quitting

Appeals Board Decision P-B-027: “[T]here is good cause for the voluntarily leaving work when the facts disclose a real, substantial and compelling reason of such a nature as would cause a *reasonable person genuinely desirous of retaining employment* to take similar action.”

Good Cause

- Spouse Moving for Work
- Compulsory Retirement
- Domestic Abuse
- Seniority Plan
- Equal Employment Opportunity Violations
- Sexual Harassment

No Good Cause

- Incarceration and Conviction

Example: Appeals Board Decision P-B-008

- Lorraine worked at a drug store for 5 years. During the last 2 years she worked a shift every 3rd Sunday from 4:30pm to 1am, then the next day at 7am. The hours of the shift violated labor codes.
- She voluntarily quit after being denied time off on a Sunday that was Mothers' Day.
- Lorraine stated she left because of the shift hours. Employer testified she had never before complained about the shift hours.
- Benefits were denied. Appeals Board reasoned that an employee who actually wanted to work would have complained about hours or would have tried to switch shifts before quitting.
- Benefits denied even though the labor violation would have constituted good cause: the hours violation was not Lorraine's actual cause for quitting.
- The Appeals Board only looks at the reasons the claimant raised in their application and does not have to examine the entire employment relationship between the claimant and the employer.

Other Disqualifications for Unemployment Compensation Benefits

- Files a UI claim during a recess period, if they worked for a school employer and had reasonable assurance of returning to work for a school employer.
- Received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States.
- Displayed chronic absenteeism or neglect of duty because of drugs or alcohol, or an irresistible desire to consume them.
- Voluntarily left work because of an ongoing trade dispute.
- Is not legally entitled to work in the United States.
- Failed to comply with regulations in filing a UI claim.

Constructive Quit

- The doctrine of *constructive quit* has evolved in order to address one type of employment separation that is not quite a "discharge" or a "quit" when determining an individual's eligibility for benefits under UCI Section 1256.
- An employee who constructively quits has voluntarily left with no good cause.
- 3 elements must be met for claimant to have constructively quit:
 - The claimant voluntarily committed an act.
 - The act made it impossible for the employer to continue to use the claimant's services.
 - The claimant knew or reasonably should have known that the act would possibly result in loss of employment.

Example: Appeals Board Decision P-B-288

- William was convicted of DUI while driving his private car. He had been working for 5 years as a truck driver.
- He was fired from his job after his employer learned that his license was revoked for one year as consequence of the DUI conviction.
- This is a case of constructive quit where the claimant left without good cause:
 - William voluntarily set in motion the events that led to his conviction and loss of license.
 - His employer had no other available work that did not require a drivers license.
 - William should've reasonably have known that loss of his driver license would lead to the loss of his job.
- Because William voluntarily left without good cause, he is ineligible for unemployment benefits.

Review Process of Unemployment Compensation Claims

Respond to *Notice of Unemployment Insurance Claim Filed* (DE 1101CZ or DE 1101ER)

- First opportunity for employers to give unemployment eligibility information

Employers must appropriately respond to the notice. Failure to respond will cause the employer to:

- Waive getting notice of the Employment Development Department's determination on the unemployment claim
- Lose its right to object to the unemployment benefit determination and right to appeal the determination

Respond to *Notice of Wages Used For Unemployment Insurance Claim* (DE 1545)

- Second opportunity for last employer to give unemployment eligibility information
- First opportunity for base period employer to give unemployment eligibility information

To appeal, written appeal must be given to EDD within 30 days of the date the decision was mailed.

Independent Contractors

- Independent contractors are different for unemployment compensation benefit.
- Section 621 (b): ABC Test. Someone giving labor or services for payment will be classified as an *employee rather than an independent contractor* unless employer shows all these conditions:
 - The worker is free from the control and direction of the employer in connection with the performance of the work, both under the contract for the performance of the work and in fact.
 - The worker performs work that is outside the usual course of the employer's business.
 - The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.



Q & A

Thank you for joining us!

We'll see you next time.
Have a great day!

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