

EFFECTIVE PARTICIPATION IN UNEMPLOYMENT COMPENSATION PROCEEDINGS AND THE LAW OF QUILTS AND FIRES

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Office of Program Policy

OVERVIEW



- 1. Unemployment Basics**
- 2. Eligibility Determination Process**
- 3. Employer Participation in the Proceedings**
- 4. Appeals Process**
- 5. Substantive Law – Quits and Fires**
- 6. Tips for Employers**

What is Unemployment Compensation?

- **Federal Unemployment Tax Act**
- **Insurance funded by employer tax system**
- **Provides economic support for individuals who are unemployed through no fault of their own**
- **Not based on hardship**
- **Eligibility determined by statutes, regulations and case law**

ONLINE RESOURCES FOR EMPLOYERS

WWW.CT.GOV/DOL

- ❑ **Employer's Guide to Unemployment Compensation**
- ❑ **Unemployment Separation Packet**
- ❑ **Unemployment Insurance Tax Information**
- ❑ **Experience Rating/Reimbursing Employers**
- ❑ **Unemployment Insurance Substantive Law Regulations.**
- ❑ **Board Index of Precedent Decisions (ADLIB)**



Eligibility Determination Process

- **Establishing a Claim**
 - Fully or Partially Unemployed
 - Separation Packet
 - “Dial to File” System
 - Internet Initial Claim System
 - Lack of Work Verification
 - Scheduling a Hearing, if required



Eligibility Determination Process

Must be:

□ **Monetarily Eligible**

and

□ **Non-Monetarily Eligible**

Eligibility Determination Process For Monetary Eligibility

- **Monetarily Eligible**
 - **Base Period – 1st four of last five completed calendar quarters**
 - **Weekly benefit rate –
Max \$616 X 26 weeks**

Eligibility Determination Process For Non-Monetary Eligibility

- Reason for Separation other than “lack of work”
- First Level Adjudication
- Appeals Level
- Board of Review
- Superior Court



2016 CLAIMS

- **Initial Claims:** 201,976
(includes new and additional)
- **Weeks Claimed:** 2,185,142
- **Weeks Paid:** 2,013,208
- **Benefits paid:** \$702,910,429

2016 ELIGIBILITY DECISIONS ISSUED



119

Superior
Court

1,594

Board of
Review

13, 892

Appeals Referee

78,612

Administrator

Eligibility Determination Process

First Level Adjudication

- **Hearing notice – date, time, issue**
- **Informal hearing by phone**
 - ▣ **Employer response – phone or mail**
- **Statements taken**
- **Statements certified**

PARTICIPATION IN FIRST LEVEL HEARINGS (Predetermination Hearings)

- General rules
- Value of employer participation
 - None - 15% employer favorable
 - Written - 34%
 - Telephone - 45%
- Consequences of non-participation
 - Only claimant statement considered
 - Employer charges



REGULATIONS GOVERNING EMPLOYER PARTICIPATION IN PREDETERMINATION HEARINGS

CONN. AGENCIES REGS. § §31-244-1A TO 31-244-8a

- **Timeliness of employer's written response:**
Must be received in the office where the hearing will be conducted within 10 days of the mailing date of the notice.

REGULATIONS GOVERNING EMPLOYER PARTICIPATION IN PREDETERMINATION HEARINGS (CONTINUED)

- **Adequacy of employer's written response:**
 - * **Specify the reason for separation**
 - * **Answer in good faith the questions on the hearing notice that pertain to the reason for separation**
- **Implications for employer's tax charges under Conn. Gen. Stat. §31-241**

Conn. Gen. Stat. Sec. 31-241(a)

- *“ For any determination of an overpayment made on or after October 1, 2013...whenever the employer, after receiving notice of such hearing, fails to appear at the hearing or fails to submit a timely and adequate written response in a manner prescribed by the administrator, such employer’s proportionate share of benefits paid to the claimant prior to the issuance of a decision by a referee...or the Employment Security Board of Review... shall be charged against such employer’s account.”*

In other words....

Conn. Gen. Stat. Sec. 31-241(a)

- If an employer does not participate in the Administrator's predetermination hearing adequately or in a timely manner and benefits are approved, that employer will not be relieved of its proportionate share of charges for each week determined to be overpaid, even if the employer prevails upon appeal.

PENALTY FOR NON-PARTICIPATION

The non-participating employer's account remains liable for charges for all weeks up to the date the Referee reverses the decision.

C.G.S. 31-241(a)

Example:

Week 1 – initial claim filed

Week 2 – notice period

Week 3 – predet hearing

Week 4 – benefits allowed

Week 5 – appeal period

Week 6 – appeal period

Week 7 – employer appeals to Ref

Week 8 – notice period

Week 9 – notice period

Week 10 - Ref's hearing

Week 11 - reversal issued

THE LAW



Quits

&

Fires

DISCHARGES

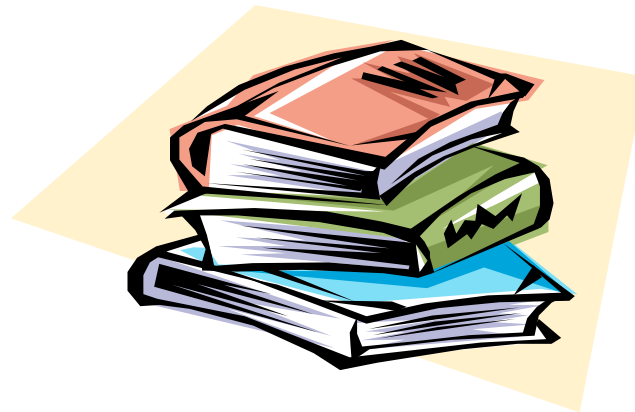
- Burden of proof on employer
- Final incident of wilful misconduct.
- In the course of employment
- Three statutory definitions of wilful misconduct

THE THREE STATUTORY DEFINITIONS OF WILFUL MISCONDUCT

- **Deliberate Misconduct**

- **Absenteeism**

- **Rule Violation**



DELIBERATE MISCONDUCT



Deliberate misconduct in wilful disregard of the employer's interest

DELIBERATE MISCONDUCT

- ❑ ACT OR OMISSION CONTRARY TO EMPLOYER'S INTEREST
- ❑ COMMITTED INTENTIONALLY OR WITH RECKLESS INDIFFERENCE TO CONSEQUENCES
- ❑ KNEW OR SHOULD HAVE KNOWN CONTRARY TO EMPLOYER'S INTEREST
- ❑ NO MITIGATING CIRCUMSTANCES

RULE VIOLATION



A single knowing violation of a reasonable and uniformly enforced rule or policy of the employer

KNOWING VIOLATION OF WORKPLACE RULE

- KNEW OR SHOULD HAVE KNOWN THE RULE
(Effectively Communicated)
- REASONABLE RULE
- UNIFORMLY ENFORCED
- REASONABLE APPLICATION
(Does punishment fit the crime?)

KNOWING VIOLATION OF WORKPLACE RULE

- ❑ NO MITIGATING CIRCUMSTANCES
- ❑ VIOLATION NOT RESULT OF INCOMPETENCE
- ❑ NOTE: INTENT TO HARM EMPLOYER USUALLY NOT REQUIRED

ABSENTEEISM



A single knowing violation of a reasonable and uniformly enforced rule or policy of the employer

ABSENTEEISM

In the case of absence from work, an employee must be absent without either good cause for the absence or notice to the employer which the employee could reasonably have provided under the circumstances for three separate instances within a TWELVE-MONTH period.

(continued next page)

ABSENTEEISM

Except with respect to tardiness, for purposes of subparagraph (B) of this subsection, **each instance in which an employee is absent for ONE DAY or TWO CONSECUTIVE DAYS without either good cause for the absence or notice to the employer which the employee could reasonably have provided under the circumstances constitutes a “separate instance.”**

Conn. Gen. Stat. Sec. 31-236(a)(2)(B)(16)
as amended by Public Act 04-214

ABSENTEEISM

□ EMPLOYEE MUST BE ABSENT –

- For three separate instances within a twelve-month period.
- A “separate instance” is one day of absence or two consecutive days of absence (in contrast with “old” law – wherein a “separate instance could include consecutive multi-day absence of up to two weeks).
- The three separate instances must include final instance.

ABSENTEEISM

□ EACH INSTANCE OF ABSENCE MUST BE WITHOUT EITHER –

- Good Cause for the absence **OR**
- Notice to the employer which the employee could reasonably have provided under the circumstances.

Consecutive Days – Separate Instances

In regulation 31-236-26d of the Regulations of Connecticut State Agencies, the Administrator provides a chart to assist in determining the number of separate instances where an absence without good cause or without notice continues for two or more consecutive days:

<u>Consecutive Days</u>	<u>Instance(s) of Absence</u>
2	1
3	2
4	2
5	3
6	3

What Is NOT An Absenteeism Case

Exclusions (Sec. 31-236-26d(g))

(1) Tardiness

- Must be decided under section 31-236-28
- “Pattern of tardiness”

(2) Unauthorized Leaving of Work

- Leaving work site once individual has reported to work must be adjudicated as either –
 - Deliberate misconduct (Section 31-236-26a)
 - Knowing violation of reasonable workplace rule (Section 31-236-26b)

ELEMENTS OF A VOLUNTARY LEAVING OF WORK

- ❖ A claimant is disqualified if:
 1. He voluntarily left
 2. Suitable work
 3. Without good cause attributable to the employer
- ❖ Burden of Proof is on the claimant
- ❖ Good Cause Attributable to the employer
- ❖ Must seek remedy
- ❖ Non-charge exceptions

Conn. Gen. Stat. Sec. 31-236(a)(2)(A)

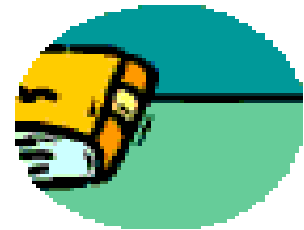
NON-CHARGE EXCEPTIONS

- Quit to care for
- Quit to follow spouse to new employment
- Quit due to domestic violence
- Quit to follow military spouse with new orders

Tips for Employers

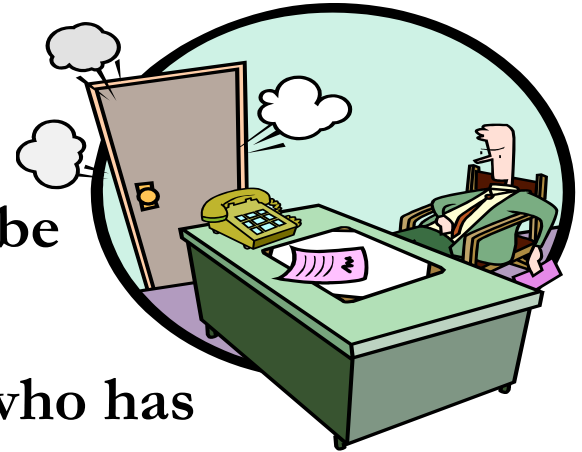
What can an employer do to increase the prospects that only former employees who are legally entitled to benefits actually collect?

- ❑ Publish and distribute workplace rules.
- ❑ Document violations.
- ❑ Enforce the rules uniformly and consistently.
- ❑ Learn the basics of Unemployment Compensation law.
- ❑ Participate in the eligibility process **FROM THE BEGINNING!**
- ❑ Remember - Incompetence is not wilful misconduct.



More Tips for Employers

- Not every award of benefits should be appealed.
- Don't assume that every employee who has "resigned" has "left work voluntarily".
- If a worker gives notice and is let go during the notice period, the separation is a discharge unless the worker is paid for the notice period.
- An unsuccessful attempt to rescind notice could be categorized as a quit or a discharge.



QUESTIONS AND DISCUSSION

