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Termination or Resignation is Only the Beginning: Idaho's Unemployment Claims Process

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The number of new unemployment claims filed in Idaho has been on a steady increase over the past several years. For the period January 1 through July 2, 2010, the Idaho Department of Labor received 44,287 initial unemployment claims. That is a vast increase from 2006, when the Department of Labor received 47,978 claims for the entire year. On average, 60% of initial claims result in a determination awarding the employee benefits. Benefits paid to an employee are charged against the employer's account. These charges create the potential for an employer's unemployment insurance premium to increase.

The increase in benefits paid has depleted the state's funds, forcing the state to borrow from the federal government to cover benefits. If the fund becomes too depleted, the potential exists for the state to increase the tax on all employers to restore the fund balance. For these reasons, it is in every employer's best interest to insure benefits are only awarded to claimants who are actually entitled to them. This article explains the administration of Idaho's unemployment claims process, so that employers can navigate the process and better protect themselves from unjustified benefit awards.

Unemployment Insurance is a Federal Program Administered by the States

Every state's unemployment insurance program, including the one administered by the Idaho Department of Labor, has its roots in the federal Social Security Act. The Social Security Act directs states to set up a program for administering unemployment benefits, and sets forth a number of requirements for the programs to meet before they will be entitled to receive federal dollars. One of the requirements is that states ensure payment of full unemployment compensation when it becomes due. This requirement has resulted in an unemployment claims process that runs on short timeframes.

An Unemployment Claim is Initiated by the Former Employee

An unemployment claim springs to life when a former employee files a claim with the Department of Labor. After receiving the initial claim, the Department of Labor first verifies the claimant's "monetary eligibility" for benefits. Idaho law requires the claimant to have earned a certain amount of wages during a "base period," which is typically the first four of the five preceding quarters.

After determining the claimant is monetarily eligible, the Department then verifies whether the claimant is eligible for benefit. This determination is made by an individual known as a "claims examiner." The Department's claims examiners are not attorneys, but do receive training on making eligibility determinations.

In order to verify eligibility for benefits, the claims examiner contacts the claimant by telephone for an interview. The claims examiner typically follows a written script, and seeks information regarding the claimant's employment history, earnings, reason for separation and other relevant information.

At the time a claim is filed, the Department also sends a written “Notice of Separation” form to the claimant’s last known employer and each preceding employer covering the time period during which the claimant earned 14 times her weekly benefit amount. Due to this requirement, it is possible that more than one former employer may be contacted. If the claimant is awarded benefits, the employer who paid the most wages during the base period is the employer whose account is charged for the benefits paid. The potential therefore exists for a claimant to quit a former employer in favor of a new one, and the former employer is charged for the unemployment benefits paid after the employee is terminated by the new employer.

The claims examiner will follow up with the employer by telephone within 7 business days after sending the notice of separation, and usually after conducting the claimant’s interview. The claims examiner will ask the employer about the reasons for separation, the claimant’s earnings and other such information. The claims examiner may also ask questions concerning the claimant’s stated reasons for separation. Idaho law requires every employer to respond to the Department concerning the reasons for the claimant’s separation.

The claimant and employer are encouraged to submit any written documentation supporting or evidencing the reasons for the claimant’s separation. All interested parties will be given an opportunity to rebut contradictory information provided by other parties. The claims examiner will consider all the information provided to render a decision concerning eligibility for benefits.

The Rules Applicable To Eligibility Determinations

Claimants are only entitled to benefits when they become unemployed through no fault of their own. Examples of such scenarios include: (1) quitting for good cause in connection with the employment; (2) being discharged for reasons other than misconduct; (3) a reduction in hours resulting in less than full-time work; and (4) being laid off due to lack of work. For the first two scenarios, Idaho law sets out what an employee or employer must show in order to demonstrate whether a separated employee is entitled to benefits. The latter two scenarios are self-explanatory, and Idaho law does not require any additional showing to justify an award of benefits. There are additional requirements for a claimant to maintain eligibility for benefits, such as registering for work and demonstrating she has been applying for work. These additional requirements are not addressed in this article, but are set forth in Idaho Code Section 72-1366.

When a claimant is unemployed because she quit, the burden is on the claimant to establish she voluntarily left for good cause connected with the employment. To be a “quit” for good cause connected with the employment, a claimant’s reasons for quitting must arise from the working conditions, job tasks, or employment agreement. Reasons arising from personal or non-job related matters are not connected with employment and, therefore, cannot constitute good cause. When determining what is reasonable, the examiner will consider what the average man or woman would consider reasonable. In order to constitute good cause, the circumstances which compel the decision to leave must be real, not imaginary, substantial not trifling, and reasonable, not whimsical; there must be some compulsion produced by extraneous and necessitous circumstances. This means the reason for leaving must be more than a personal preference, dislike of job tasks, or dislike of co-workers.

The claimant must also establish that she examined reasonable alternatives prior to quitting. Quitting without exploring viable options to resolve concerns does not constitute good cause. If a claimant wants to be eligible for benefits, she must demonstrate that she tried to work out her issues with the employer prior to quitting.

Idaho law sets forth a number of scenarios that can constitute good cause connected with employment. Good cause can include reasonable and serious moral or ethical objections to the work requirements of the employer, or a health or physical condition that makes it impossible for the claimant to continue to perform the duties of the job. Where an employee voluntarily resigns in lieu of termination, the resignation and the termination are evaluated separately. In order to be eligible for benefits, the claimant will need to establish she quit for good cause connected with her employment. In order to prevent the claimant from receiving benefits (and as

explained below), the employer will need to establish that it terminated the claimant for misconduct connected with employment.

A claimant terminated for misconduct related to employment is ineligible for benefits. The burden of proof is on the former employer to establish the claimant was terminated for employment-related misconduct. In order for a claimant to be declared ineligible for benefits, the misconduct must involve one of the following: (1) a willful, intentional disregard of the employer's interest; (2) a deliberate violation of the employer's reasonable rules; or (3) a disregard of a standard of behavior which the employer has the right to expect of his employees. Actions which are not considered misconduct connected with employment include mere inefficiency, unsatisfactory conduct, failures as the result of inability or incapacity, isolated instances of negligence, or good faith errors in judgment or discretion. Discharge for conduct involving personal, non-work related behavior does not constitute discharge for misconduct connected with employment.

When arguing the willful, intentional disregard of the employer's interest, the employer must show the interest that was violated. An example of such an interest would be a statute or government regulation requiring a company to maintain certain safety standards. The employer must also establish that the claimant willfully and intentionally disregarded the interest, which implies a showing that the claimant was aware of the interest prior to engaging in the misconduct.

With regard to the disregard of employer rules, the employer must establish that the claimant's violation was a deliberate and intentional violation of the spirit of the rule. Again, the requirement that the violation be deliberate and intentional indicates the claimant must have been aware of the rules prior to the misconduct.

When determining whether the claimant disregarded a standard of behavior which the employer has a right to expect of his employees, there is no requirement that the claimant's conduct be willful, intentional or deliberate. The claimant's subjective state of mind is irrelevant. Because of this standard, this is the test most employers try to meet when arguing the claimant was terminated for misconduct related to employment.

In order to prove an employee disregarded standards of behavior, the employer must show: (1) the claimant's conduct fell below the standard of behavior expected by the employer; and (2) the employer's expectation was objectively reasonable in the claimant's particular instance. If the employer's expectations were not ones that flowed naturally from the employment relationship, the employer must establish that it communicated the duties and expectations to the claimant prior to termination. One example of an expectation that flowed naturally from an employment relationship was an aviation company's expectation that its employees would not cross airport runways without approval from the control tower.

Employers are counseled to advise employees of all conduct expectations at the beginning of the employment relationship and then as necessary during the course of employment. This can be accomplished through the personnel manual and written disciplinary notices. Employers who can establish the employee was made aware of conduct expectations stand a much better chance of success when attempting to establish an employee was terminated for misconduct.

Types of Evidence Considered When Determining Eligibility for Benefits

Administrative agencies are not bound by the same rules lawyers are bound by when admitting evidence in Court. The claims examiner has the discretion to consider any type of reliable evidence that supports one party or the other, even if that evidence would not be admissible in a court of law. This includes the consideration of hearsay evidence.

Hearsay is evidence given by a witness that is not within the witness' personal knowledge but, instead, concerns what others have told him or her, or what he or she has heard others say. While the claims examiner can

consider hearsay evidence as support or corroboration for a party's testimony or evidence, the claims examiner cannot make findings that are supported only by hearsay.

The practical effect of these restrictions is that the employer needs to ensure it presents at least one witness who has personal knowledge of the claimant's misconduct or the circumstances under which the claimant quit. If an employer only provides witnesses who testify about what others told them, or what they heard others say, the employer runs the risk of having the claims examiner disregard the evidence or conclude that the employer has not met its burden because the employer's case is based entirely on hearsay.

One way to visualize how a party meets its burden is to imagine that each side places its evidence on a scale. A party meets its burden when the scale tips ever so slightly in its favor. If the two sides of the scale remain even, *i.e.* the credibility of the employer and the claimant are equal, the party has failed to meet its burden and the other side wins. For this reason, it is important to give the claims examiner all documentation that supports the employer's position. The claims examiner will consider the documents, and the more evidence the employer can present to corroborate and support its position, the stronger the employer's case will be.

Providing the claims examiner with documentation is especially important when trying to establish the three bases for misconduct explained above. Establishing the employee was advised of rules or conduct expectations prior to termination strengthens the employer's case for misconduct. Employee handbooks and written counseling notices are very helpful in supporting the employer's position. To be considered credible, written disciplinary notices should be prepared contemporaneous with the misconduct. If an employee was terminated or counseled for not following certain laws or rules relating to the employer, copies of those laws or rules should also be provided. At least one employer lost an unemployment appeal because it did not provide the examiner with copies of the OSHA provisions that it contended the claimant violated, resulting in the claimant's termination.

It is important to get this information to the claims examiner as soon as possible so it can be considered at the time of the initial determination. Once interviews are completed, claims examiners do not waste time in making a determination. A claims examiner will make several phone calls to obtain the employer's version of events, but if no return call is received the examiner will make a determination based only on information provided by the claimant. Employers are better off providing all evidence earlier in the process so the right decision is made at the first stage.

Appealing the Initial Determination

After considering all of the evidence, the claims examiner usually makes a determination within 7-10 days after speaking with the employee and employer. If either party is dissatisfied with the claims examiner's determination, the party has 14 days from the date the determination was mailed to file an appeal with the Department. The deadline and address for appeal is usually included at the end of the Notice of Determination.

The appeals process moves quickly. The appeal is handled by an "appeals examiner." Approximately half of the Department's appeals examiners are attorneys. The Department sends a notice to the parties 7 days in advance of hearing, setting the date for a telephonic hearing on the appeal and attaching copies of all documents that have been provided to the appeals examiner. Parties can submit a written request for a different hearing date. In most cases only one extension will be granted, so parties should provide suggested available dates when requesting an extension.

It is crucial for employers to closely review the documents attached to the notice of hearing. The documents attached to the notice do not always include all documents that the employer may have provided to the claims examiner. The appeals examiners are very reluctant to reopen appeals after the hearing, and it is virtually impossible to provide additional evidence during subsequent appeals. As such, the employer's best and often

only opportunity to provide written evidence to the appeals examiner is in advance of the telephonic appeals hearing. Therefore, it is imperative that the employer closely review the notice and provide any additional written documentation to the appeals examiner in advance of the hearing.

The telephonic appeals hearing will be recorded. Both parties are encouraged to provide testimony from witnesses who can support the party's position. If a party is concerned about a witness' cooperation or ability to procure documents essential to the party's case, the party can formally request the hearing officer to subpoena the witness or documents for the hearing. The law directs the appeals examiner to issue the requested subpoenas unless unreasonable.

Employers are well-advised to retain counsel at the appeals examiner stage. An attorney can guide the employer through the appeals hearing process and ensure all necessary evidence is presented. There is no room for mistakes or inadvertent omissions at the appeals examiner stage.

Claimants who quit their employment will sometimes argue that they quit because they were subjected to unlawful harassment or discrimination. Attorneys for claimants have been known to abuse the subpoena power of the appeals examiner to conduct free discovery and build an unlawful termination, discrimination or harassment case. Appeals examiners have issued decisions concluding a claimant was subjected to unlawful harassment or discrimination. Claimants will often attempt to introduce determinations finding harassment or discrimination during a subsequent lawsuit. The employer's attorney can take steps to limit subpoenas and avoid having the appeals hearing process perverted.

If an employer chooses to proceed with the appeals hearing on its own, the employer should ensure sufficient time is devoted to preparing for the hearing. Hearing preparation should involve identifying what the employer needs to prove in order to prevail. If the claimant voluntarily quit, the employer will want to focus on proving the claimant did not have good cause to quit, that the claimant did not exhaust all options prior to quitting, and/or the claimant quit for reasons unconnected to the actual employment. If the claimant was terminated, the employer will want to focus on establishing the termination was for misconduct. The employer's evidence will likely focus on establishing one of the three bases for misconduct, including that the employee was advised or counseled concerning conduct expectations prior to termination.

Appealing the Appeals Examiner's Decision

The appeals examiner will usually render a written decision within 10 business days following the telephonic hearing. If either party is dissatisfied with the decision, they have 14 days from the date of mailing to file a notice of appeal with the Idaho Industrial Commission. The appeals examiner's decision will usually set forth the deadline to appeal and where the appeal needs to be sent.

The Industrial Commission has its own rules for unemployment appeals, which can be found on the Industrial Commission's website: www.iic.idaho.gov. The rules set forth the procedures for appeal, including several important requirements for employers. A notice of appeal to the Commission can be filed by an employer's attorney or by the employer on its own behalf. In the case of corporations, a notice of appeal may be filed by the corporation's attorney, a corporate officer or any employee usually designated to handle unemployment appeals. Notices of appeal will not be accepted from employer representatives who are not employees or attorneys.

Employers who use an outside company or person to handle unemployment claims should not rely on the third party to file an appeal to the Industrial Commission. One of our clients recently had a meritorious appeal to the Industrial Commission. Our client used an outside company to handle its unemployment appeals. The outside company filed a notice of appeal on the client's behalf. By the time our client received notice the appeal had been rejected by the Commission, the time to appeal had passed.

After a notice of appeal has been filed, employers can only be represented by certain individuals. All employers can be represented by counsel. In addition, sole proprietorships can be represented by the owner, and partnerships can be represented by a partner. Corporations must be represented by an attorney because a corporation is a fictional entity that exists separate from its Board or Officers. Attorneys representing a party must be admitted to practice law in the state of Idaho, or otherwise associated with an Idaho attorney.

The Commission will only consider additional evidence not presented to the appeals examiner when required in the interests of justice. The Commission generally construes this to mean that the evidence was not available at the time of the hearing before the appeals examiner. It is very rare for the Commission to consider additional evidence not presented below, or to otherwise hold a hearing on an appeal. This is why it is of the utmost importance to ensure all evidence is provided to the appeals examiner.

The Commission's Review Process

The Commission considers all evidence provided to the appeals examiner, including the recorded telephonic hearing, and any written argument provided by the parties. The Commission will review all determinations made by the appeals examiner, not just those raised on appeal. The Commission will re-weigh the evidence, and review credibility determinations and legal conclusions. It is not unusual for the Commission to reverse or modify the appeals examiner's decision.

Employers should request the right to submit briefing outlining their arguments for upholding or reversing the appeals examiner's decision. The Commission usually grants such requests. Providing written arguments identifies the issues and evidence that should be reviewed and ensures the Commission understands the employer's arguments. If counsel has not yet been retained, the employer should give serious consideration to hiring an attorney to prepare the employer's brief.

The Final Level of Review

The Commission usually renders a written decision within several weeks of receiving the parties' briefing or, if no briefing is provided, within several weeks of receiving the recording of the appeals hearing and evidence provided to the appeals examiner. If the parties disagree with the decision rendered by the Industrial Commission, they can request the Commission to reconsider its decision, or appeal to the Idaho Supreme Court. A motion for reconsideration must be filed with the Commission within 20 days of the filing date of the Commission's decision. A notice of appeal must be filed with the Commission within 42 days of the filing date of the Industrial Commission's final decision.

The Supreme Court's review of the Industrial Commission's decision is very limited, and reversal is rare. The Supreme Court will not reweigh the evidence or consider whether it would have reached a different conclusion from the evidence presented. Whether an employee committed misconduct, or whether an employee quit for good cause connected with employment, are factual findings that will be upheld unless the findings are unreasonable. The existence of conflicting evidence does not make a finding unreasonable, so long as there is some evidence in the record to support the finding.

Given the limited review conducted by the Court, employers are advised to consult with an attorney and carefully consider whether to appeal an adverse decision of the Industrial Commission. Not only is reversal difficult to win, but under state law, unemployment proceedings remain confidential while moving through the Department of Labor and the Industrial Commission. That confidentiality is lost by the filing of an appeal with the Supreme Court. After the appeal is filed, everything previously submitted becomes public record. Given the unlikelihood of winning reversal, employers may be better served by keeping the matter confidential and not allowing the decision and the details of its employment relationship with the claimant to become public.

Final Thoughts

As this detailed discussion of the unemployment claims process shows, employers should be proactive and prompt in responding to inquiries from the Department of Labor. It is in all employers' best interest to ensure claims examiners are provided with prompt, correct information so employers are not charged for undeserved benefits. When providing information in response to an inquiry or on appeal, employers should determine what they need to prove in order to prevail, and provide the examiner with all evidence and testimony in its possession that supports its position. Getting an attorney involved early in the appeals process will help protect the employer's interests and ensure the full story is told so a correct benefits determination is made.