



Unemployment Insurance Services

Eliminate the hassle. Start winning claims.
Navigating Troubled Waters:
Understanding the UI System

The Basics of UI

Created to provide temporary relief to individuals unemployed through no fault of their own

- Inherently biased in favor of claimant
- Claimant can collect \$479.00 per week for 16-26 weeks in a 12 month period
- Liability is determined by wages paid in base period. Rough 1/3 of the wages capped at \$479 per week.
- Base Period is the 4 completed quarter prior to the most recent completed calendar quarter
- If they must go, they must go early – zero liability in the first 90-120 days

Ineligibility vs. Disqualification

- Disqualification is permanent until claimant requalifies
- Ineligibility is temporary based on eligibility criteria
 - Able and available
 - Job status – i.e. Worker's Comp. or LOA's
 - Reasonable Assurance
 - Substitute Employees
 - Earned wages in excess of weekly benefit amount

Reasonable Assurance

- Prohibits district employees from UI benefits
 - During the school term
 - During regularly scheduled breaks (Holiday/Spring)
 - In between school terms
- Reasonable assurance can be written or verbal
- Legal criteria is reasonable assumption of same or similar work

Substitute Employees

- Prohibited from collecting benefits in between school terms or scheduled breaks
- **Do have** reasonable assurance during school term
- Protest job refusals whenever possible
- Job refusals offer another avenue to contest the claim!

Misconduct v. Inability

- What is the difference?
 - Misconduct is a willful and deliberate act on the part of the employee. They had control over their circumstances.
 - Inability is defined as the claimant made a **good faith effort** to perform the work, but lack the skills necessary to meet the employer's standards.

Essentials of Proving Misconduct

- Progressive Discipline is essential!
- Create specific & detailed documentation
- Control the message – Assume the employee has the skills and training.
 - Avoid sentences that imply “inability”
 - “Joe has been unable to consistently meet our performance standards” – NO!
 - “Joe has failed to meet the standards 5 out of 12 weeks. Joe has shown the ability to meet our standards in the past” – YES!

Focus on Issues the Employee Controls

- The employee is not meeting standards – **WHY?**
 - Are they following the training?
 - Are they following your SOP's/Policies?
 - Is their focus always on their job duties?
- Drill down – Find the reasons why they are not performing consistently.
- Utilize your whole policy manual – Often the issues overlap
- Business Decision? Win claim or Cut Losses?

Gross Misconduct

- Gross misconduct is defined as behavior or actions that warrant immediate discharge
- Includes insubordination, theft, workplace violence, and harassment
- Documentation is crucial
 - One chance to prove misconduct
 - Witness statements
 - First hand information essential

Attendance Issues:

How Does the State View Attendance claims?

- The most liberally viewed issue, slanted very heavily in favor of claimant
- The focus is on “Good Cause”, not the number of infractions
- Progressive discipline very important
- Tracking reasons for occurrences a must
- In Kansas, absences for health issues must be supported by a doctor’s note

What is “Good Cause”?

- Any instance of absence or tardiness which is considered unavoidable
- For attendance it can be illness, either personal or that of a family member. Emergencies will fall into this category
- For tardiness, the reasons could be traffic or other unexpected delays i.e. car trouble
- Good cause is a broad grey area.
- Very little consistency in the application

Strategies to Increase your Chances

- Ask why they are absent or tardy
- Document the incidents even if you use a no fault policy
- Request medical certification
- Look for patterns in absenteeism/tardiness. Good cause can be minimized by establishing a pattern
- Try to tie in other policies – Think strategically when reprimanding the employee

“I Quit my job because..”

- The employee has the burden of proving good cause **that was attributable to the employer**
- **Claimant must show that they made every attempt to preserve the employment**
- **Good cause can be one of the following:**
 - **Hostile work environment**
 - **Discrimination or harassment**
 - **Change in the hiring agreement**
- **Good cause is not:**
 - **General dissatisfaction with the employment**
 - **Disagreement over disciplinary actions**
 - **Transfer of work site or change in job description if notified at time of hire that employer reserves the right to make adjustments**

Things to Remember about Resignations

- Get a letter of resignation whenever possible
- Allow the employee to fulfill their notice period
- Always document issues that might be in dispute
- If you can not obtain a written resignation, send the claimant a certified letter
- “Constructive discharges” are **NOT** resignations

“You can’t handle the truth!”

- The unemployment hearing process
 - ✓ Conducted by an Unemployment Law Judge
 - ✓ Both parties have the right to confront each other
 - ✓ First hand testimony is absolutely essential
 - ✓ Documentation is required to support testimony
 - ✓ Rules of testimony and evidence are enforced
- Prepare for the hearing
 - ✓ Determine the issue
 - ✓ Decide who should testify
 - ✓ Make a timeline
 - ✓ Discuss the hearing beforehand



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