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UNEMPLOYMENT COMPENSATION AND THE APPEALS PROCESS

Worst
employee
ever!

- THE BASICS
- HOW TO WIN
- HOW **NOT** TO LOSE

THE BASICS

TRUE OR FALSE?

If you are fired, you **can** get unemployment benefits.

TRUE OR FALSE?

If you quit,
you **can not** get
unemployment benefits.

TRUE OR FALSE?

People who were on the job less than 90 days can get benefits.

TRUE OR FALSE?

People who only worked a couple of days, then separated, can get benefits.

TRUE OR FALSE?

PRN (as needed)
employees are **not**
entitled to UI benefits.

TRUE OR FALSE?

If the worker was an Independent contractor, the employer **can** be named on the unemployment claim.

TRUE OR FALSE?

Deductions from employees' wages pay for the unemployment insurance system.

TAXABLE WAGE BASE

The first \$9000 of an employee's wages - subject to the state UI tax in Texas

TRUE OR FALSE?

UI benefits pay claimants what the job used to pay. They replace lost wages.

BENEFIT AMOUNT (WBA)

- Min = \$_____
- Max = \$_____

Per week

MAXIMUM AMOUNT

 weeks at
WBA per year
(\$1,924 - \$15,366)

TRUE OR FALSE?

A claimant can get benefits even if s/he accepted temporary or seasonal work with a **signed agreement** that the work will end.

TRUE OR FALSE?

Letting people go during the employer's probationary period protects the employer from UI liability.

TRUE OR FALSE?

State unemployment benefits provide temporary income replacement assistance to people **based on their need.**

FAULT BASED

UI System is based on fault, not need.

Claimant must be out of work through no fault of his/her own.

WHAT IS FAULT?

- If voluntarily left the last job “without good cause connected with the work,” the claimant is **not qualified**
- If discharged for “misconduct connected with the work,” the claimant is **not qualified**

Unemployment
Insurance
Compensation

CHARGEBACK LIABILITY

- Taxed employers - **not** a bill
- Benefits “**charged back**” to an employer’s tax account will be used in computing the employer’s UI tax rate for the **next 3 years**

REIMBURSING LIABILITY

- Reimbursing non-profits and governmental employers **do get billed** for their share of benefits.

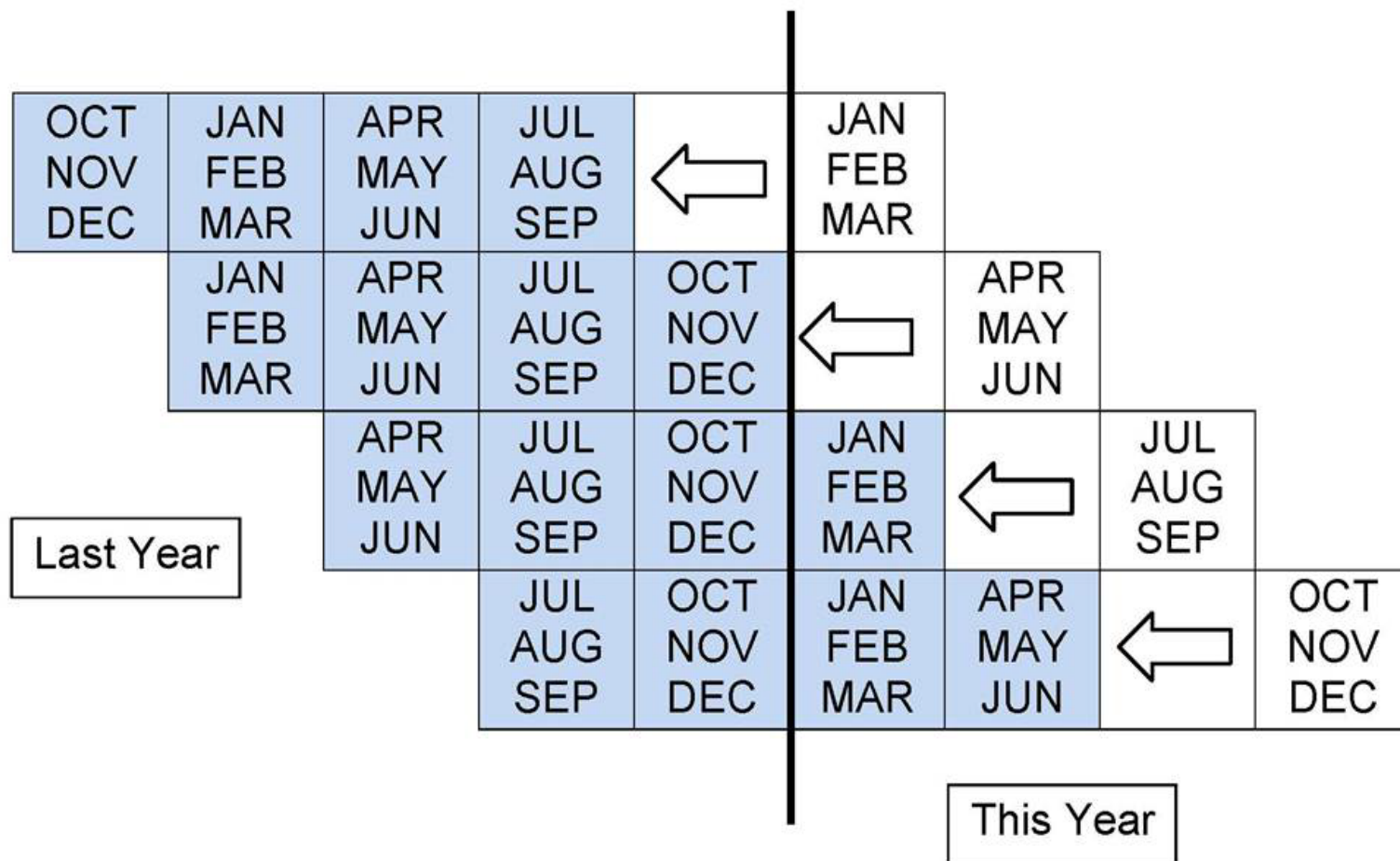
BILLABLE AMOUNTS

Up to \$15,366 per
employee

BASE PERIOD

- Period of one year
- Measured from the date of initial claim (IC)
- The **first four** of the **last five** completed calendar quarters prior to the IC

FULL YEAR OF BASE PERIODS (FORMS: Pg. 1)



EMPLOYER STRATEGY

For **short term** employees:
encourage employee to
file a UI claim sooner
rather than later so that
employer will not be in the
base period.

HOW TO WIN

TYPES OF WORK SEPARATIONS

- Fired or quit?
 - If initiated by claimant =quit
 - voluntary** work separation
 - If initiated by employer =fired
 - involuntary** work separation

CLAIMANT QUIT

Voluntary separation
– **claimant must**
prove “good cause
connected with the
work” for quitting.

GOOD CAUSE CONNECTED WITH THE WORK

“Such cause, related to the work, as would induce a person who is genuinely interested in retaining work, to, nevertheless, leave the job.”

EXAMPLES OF GOOD CAUSE TO QUIT

- ER engaging in criminal activity
- Not getting paid for work
- Health or safety issues
- Substantial change to hiring agreement

EXAMPLES OF GOOD CAUSE TO QUIT

- Hostile work environment
- Reprimand in accusatory or humiliating manner in public
- Reduction in pay or hours of 20% or more

WHAT EMPLOYER SHOULD SHOW

Voluntary
separation/quit – show
that a reasonable
employee **would not
have quit** for that
reason.

IF CLAIMANT QUIT

- **Address** any legitimate complaints
- **Investigate** as necessary
- **Take all reasonable and appropriate steps** to remedy the problem

“If it’s not
written down, it
didn’t happen.”

Quit cases
gone wrong

CLAIMANT FIRED

Involuntary separation
– **employer must
prove** “misconduct
connected with the
work.”

MISCONDUCT CONNECTED WITH THE WORK

“Mismanagement of a position of employment by action or inaction, neglect that jeopardizes the life or property of another, intentional wrongdoing or malfeasance, intentional violation of law, or violation of a policy or rule adopted to ensure the orderly work and safety of employees.”

Misconduct = some
bad behavior in
the employee's
power to control

EXAMPLES OF MISCONDUCT

- Not following instructions
- Violation of policy or rule
- Tardiness or attendance
- Time-card violations
- Misuse of company property
- Negligence resulting in loss

WHAT EMPLOYER SHOULD SHOW

Fired/discharged:

- 1) final incident of bad behavior,
- 2) close in time to the discharge
AND
- 3) claimant knew or should have known he would be discharged for that reason

IF CLAIMANT WAS FIRED

- Clear policies in place
- C was aware of policies
- Employees treated consistently
- Warnings given for violations
- Include expectations **and** consequences
- Claimant **knew job in jeopardy**

Verbal or
written
warnings?

**Worst
employee
ever!**

Focus will be
on the final
incident

The at-will
doctrine,
terminations,
and UI claims

In case of a
discharge, **only**
misconduct will
disqualify a
claimant.

NOT MISCONDUCT

- Not meeting sales quotas
- C **never** met ER's expectations
- Unreasonable ER request
- Absences due to personal illness with proper notice to the ER

Review UI flow
chart page 2 of
Forms packet

HOW NOT
TO LOSE

WHY EMPLOYERS LOSE

- Lack of evidence
- No firsthand testimony
- Late protest/late appeal
- Lay off/lack of work
- Insufficient warning
- Inability to perform

UI CLAIMS FILING PROCESS

- After job separation, Claimant contacts TWC
- Claimant names last employer
- TWC sends Notice of Claim
- Employer has opportunity to protest benefit payments and/or chargeback

NOTICE OF INITIAL
CLAIM

FORMS: PAGES

4 - 5

EMPLOYER RESPONSE

- Due **14** days from date mailed
 - Via internet, phone, fax, or mail
 - Submit documentation
-
- **If no response or late response, employer loses appeal rights**

ADEQUATE RESPONSE

- Must provide adequate response
- **Adequate** if give a reason, supported by facts, directly related to the reason for job separation
- **Not adequate** if it provides only general conclusion without substantiating facts, eg. C discharged for misconduct connected with the work or C fired for violation of policy

CONSEQUENCES

- If inadequate for a claim that was subsequently overpaid, **and**
- ER has established a pattern (2X) of failing to respond timely or adequately, **then**
- employer's account **will not be** protected from chargeback even if C subsequently disqualified

WAGE VERIFICATION
FOR REIMBURSING
EMPLOYERS

FORMS: PAGES

11 - 12

WAGE VERIFICATION FOR REIMBURSING EMPLOYERS

- Claimant did not name the employer in the claim
- Employer has opportunity to appeal
- Reimbursement will be based on reason for the job separation.

WAGE VERIFICATION FOR REIMBURSING EMPLOYERS

- Appeal due **14** days after date mailed
- **If late or no appeal, employer will be billed**

TWC INVESTIGATION

- Claims Investigator contacts parties by phone
- **Determination** will be issued re:
 - 1) the claimant's qualification;
 - 2) employer's chargeback / financial liability
- Decision will be made with available information

INITIAL
DETERMINATION
FORMS: PAGES
14 – 15 & 17 - 18

INITIAL DETERMINATION

- **A** - Whether claimant is qualified for benefits
- **B** - Whether the employer's account will be charged
- **C** - Appeal deadline

APPEAL DEADLINE

If You Disagree with this Decision	
<p>If you disagree with this decision, you may appeal. Fax or have any appeal you may file postmarked on or before 03-15-12. TWC will use the date we receive the fax to determine whether your appeal is timely. If you file your appeal by fax, you should retain your fax confirmation as proof of transmission. Please include a copy of this notice with Appeals correspondence. The Appeal must be in writing to this address:</p>	
<p>Appeal Tribunal Texas Workforce Commission 101 E. 15th Street Austin, TX 78778-0002 FAX (512) 475-1135</p>	
Case No.:	01-22-12
Claim ID.:	

APPEALS PROCESS

- File an appeal – **14** days
- Via online, fax, or mail
- **Not** via phone or email
- Include supporting docs
- No magic words
necessary

APPEALS PROCESS

- Online appeal is fastest way to appeal.
- ER must register with Employer Benefits Services (EBS) system.
- Fax and mail available.

**A late appeal
can be deadly
to your case**

TIMELINESS TIPS

- Check mail or TWC inbox
- Have someone check mail in employer's absence
- Ensure TWC has correct employer address
- If fax – get/keep confirmation
- Designate claims address
- **Don't wait until last day**

APPEAL TRIBUNAL HEARING

- Informal legal proceeding
- Telephone hearing
- Hearing Officer presides and asks questions
- **Your day in court**

AT HEARING

- Provide witnesses and documents
- Attorneys not needed – parties can rep themselves
- Present most credible and complete case

NOTICE OF HEARING PACKET

- Date / time of hearing
- Issues to be covered
- ****Instructions****
- Any claim protests
- Info in response to a claim
- Fact-finding statements
- Appeal letters or forms


NOTICE OF HEARING
– FIRST PAGE

FORMS: PAGE 20

NOTICE OF HEARING – FIRST PAGE

- Date and time of hearing
- Phone number or website for making party available
 - at least **30 minutes before** hearing
 - incl callback / witness information
- Instructions for documents
- Name and number of Hearing Officer

NOTICE OF HEARING

Claimant:	SSN: [REDACTED]	Employer: PI Account: [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] INC
[REDACTED] ST		DBA [REDACTED]
BROWNSVILLE TX [REDACTED]		AND [REDACTED]
		[REDACTED] DR
		BROWNSVILLE TX [REDACTED]
Hearing Date:		Hearing Start Time:
TUESDAY, APRIL 24, 2012		10:30 AM
 Call 1-800-252-3749		Central Daylight Time
between 10:00 AM and 10:30 AM for your hearing.		Hearing Officer:
		S. JELINEK

WITNESSES

- Firsthand witnesses
 - who directly saw or heard what happened
 - present at final incident

WITNESSES

- Secondhand hearsay evidence is **not given the same weight**
 - Written statements
 - Secondhand accounts

BURDEN OF PROOF

If C quit, C must prove
**“good cause connected
with the work”**

If C fired, ER must prove
**“misconduct connected
with the work”**

Understand and
meet the **burden of
proof** – tip the
scales in your favor.

BURDEN OF PROOF

- Tip the scales
- 51% to 49%
- Prove that more likely than not the final incident happened

TYPES OF EVIDENCE

- Witness testimony
- Audio/video recordings
- Documents: witness statements, time records, policies, social media postings, etc
- Photos

Use your **best**
evidence.

This may be ER's
only chance.

THIS IS YOUR CASE

- Relevant / **best** evidence
- Ensure witnesses presented all relevant testimony
- Ensure admission of all relevant documents, photos, recordings, etc
- **Make sure your story is told**

TAKE-AWAYS

- Remember the base period
- Get your ducks in a row
- Hand over the keys to the job
- Appeal any adverse findings
- Be timely
- Build your strongest case
- Present 1st hand witnesses
- Tip the scales in your favor

TWC ER FRIEND

1-800-832-9394

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