

Legally (Relevant



by Gary Hanson, JD
Stumbo Hanson, LLP, Topeka, Kan.

Dealing with Unemployment Claims

Recent economic conditions, including those faced by municipalities, have brought the unemployment insurance system into focus. Kansas has had a system of unemployment insurance in effect since 1937. Still, it is not familiar to many employers.

This article will not attempt to cover all of the rules involving the system, many of which can be complex. However, there are many common misconceptions about different facets of the

program. The purpose of this article is to highlight some of those misconceptions and to guide the reader to further information when it is needed.

Here are a few of the more common misconceptions:

“We do not have to worry whether she files for unemployment, it is not our money”.

This is only partially true. The unemployment compensation program is largely funded by employer taxes (“Contributions”) that go into the Employment Security Trust Fund. So, employers do not directly pay unemployment benefits paid to former workers who apply for benefits. However, the level of tax an employer is assessed varies based on that employer’s experience rating. Each employer is assigned an experience rating based on that employer’s actual and potential risk with unemployment. All tax payments are added and all benefit charges are subtracted from that experience rating account. As a result, employers who have higher claims will pay a higher rate of tax than those with lower claims. In other words, employers should care whether an employee files for and obtains unemployment benefits.

“We will hire a temporary or part-time employee and then when that employment ends we will not have to worry about an unemployment claim”.

Wrong. When a part-time employee’s employment ends, the employer may be charged with a share of the benefits paid to that employee on a claim. Perhaps the greatest surprise to employers concerns

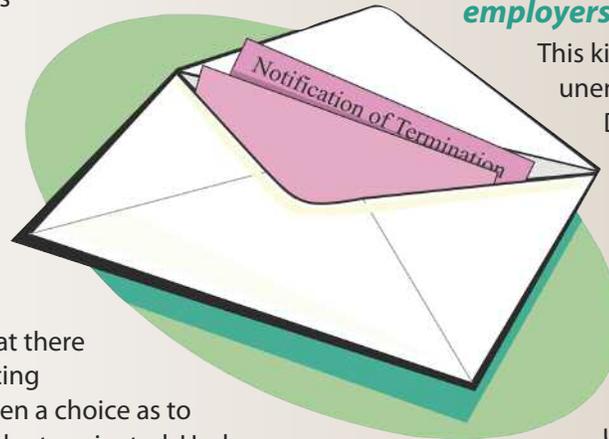
temporary workers. That is, even workers who were knowingly hired by the employer for the purpose of working only for a limited period of time can be granted unemployment benefits when that employment ends.

“If an employee resigns instead of being involuntarily terminated we will not have to worry about an unemployment claim”.

Maybe. The law recognizes that there are many situations in which facing termination the employee is given a choice as to whether to voluntarily resign or be terminated. Under these circumstances the law requires that a determination be made as to whether the termination of that employment was actually voluntary or not. If it was not voluntary, the employee may be entitled to unemployment benefits despite the “voluntary” resignation of that employment.

“We will not object to your claim for unemployment benefits if you will not make any claim against us for _____”.

The blank in the above statement could be filled in with any number of things: a worker’s compensation claim for injuries sustained on the job, a claim for discrimination or sexual harassment, or a claim for wage and hour violations, as examples. In short, an agreement such as this is contrary to public policy and is unenforceable. The result of this agreement may actually result in the employer waiving a valid defense to the allowance of the unemployment benefits claim, suffering the resulting damage to the employer’s experience rating, AND facing the employee’s subsequent claim for worker’s compensation, discrimination or sexual harassment, and/or wage and hour violations. But, see “Strategies”, on page 10.



“If you do not make a claim for unemployment benefits we will give you a good reference for future employers”.

This kind of agreement is also unenforceable. The Department of Labor will not hold that claimant to the agreement not to file for benefits. The outcome may be that the employee walks away from the job with a glowing job reference and then files for unemployment benefits.

“This employee was not good enough to deserve unemployment benefits”.

This statement might be true enough, but has nothing to do with whether unemployment benefits are actually granted. Simply being a poor employee or doing a poor job is no basis for denial of unemployment benefits. Generally speaking, only misconduct by the employee is basis for denial. Misconduct does NOT include inefficiency,

unsatisfactory performance, ordinary negligence or inadvertence. It can include lack of attendance, but only if this consists of a violation of a written policy of the employer and thoroughly documented by the employer, including in the termination notice. The bias

Simply being a poor employee or doing a poor job is no basis for denial of unemployment benefits.

is generally in favor of the employee making the claim, so the employer will need to carefully and thoroughly document the misconduct if this is going to be the basis for objecting to the allowance of a claim for benefits. What all of this highlights is the importance of making good hires in the first instance. Hiring the first applicant that comes along with the idea of terminating the ineffective employee is a wasteful, expensive proposition.

“He will make more money drawing unemployment and working side jobs than he did working for us”.

He better not! Performing any work for pay without reporting that income to the Department of Labor is fraud. Taking benefits unlawfully can result in criminal prosecution for theft. The Department employs investigators working to uncover fraud, and encourages everyone to report suspected acts of fraud.

Strategies

Employers who genuinely object to the allowance of an employee’s claim for unemployment benefits should appeal the claim. A determination will initially be made by a claims examiner. If the decision is adverse to the employer, the employer should appeal that determination. These appeals are generally conducted by phone or in writing, and are not difficult to pursue without the help of a lawyer. Subsequent appeals may require a personal appearance and the help of a lawyer.

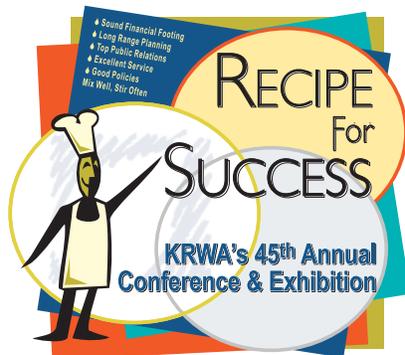
There are various strategies in play regarding an employer’s response to an unemployment claim. Some employers appeal virtually every claim made. Others have made a decision to never appeal a claim. One strategy frequently mentioned by lawyers who regularly represent employers in employment

discrimination claims is to consider whether appealing a claim for unemployment may incite the employee to make a discrimination claim against the employer, whether warranted or not. This strategy considers the fact that a discrimination claim can be filed by a disgruntled employee with an administrative agency, without the expense of a lawyer, but effectively forcing the employer to respond to the claim. This response will invariably involve the employer needing to consult with legal counsel, incurring the cost of that, as well as its own time and expense devoted to a response to the claim and the risk that the claim is found to have merit. Strategy such as this should be discussed with the employer’s legal counsel before making a decision one way or the other.

More information

The Kansas Department of Labor administers the Kansas Unemployment Insurance Program. Additional information is available from the Department. You may wish to begin by visiting the Department’s Web site, www.getkansasbenefits.gov, or by contacting the Department by phone at one of the numbers listed on that site. Finally, do not hesitate to contact your counsel if you have questions. Unemployment claims have real costs associated with them, so good employment decisions and practices are important.

Mark your calendar now, March 27-29 to attend the 45th Annual KRWA Conference & Exhibition



March 27 – 29
Century II Convention Center
Wichita, KS

Don’t miss these sessions – or the 47 others!

- KanCap: Improving The Management Of Kansas Water Systems
- Resolving Disputes In A Neighborly Way
- Mixing It Up With City Clerks
- Social Media – An Opportunity Or Invitation To Disaster?
- Sailing Through Personality Types – What’s Your Type?
- KPERS Pre-Retirement Planning
- Fair Labor Standards Act
- Future Services For A Changing Kansas Population
- Customer Satisfaction: The Key Ingredient In Customer Relations
- Input For Updating The Kansas Water Plan: The Five-Year Review
- Communication And Customer Service – Clarity Is Essential!



Headed to the KRWA show? Stop by our display to see the latest technology available in the water and wastewater industry.



One stop for all of your sewer maintenance & inspection equipment needs!



Steve Williams
Territory Manager
913-915-8709



Jeff Miles
Branch Manager
1-800-262-0149



Tom Wyant
Territory Manager
913-915-7801

www.keyequipment.com



Check us out on facebook:
www.facebook.com/keyequipment