

The ‘Ins and Outs’ of Unemployment Compensation-Understanding the Process

Unemployment Compensation is simply unemployment insurance. The Commonwealth of Pennsylvania acts as a huge insurance company that forces employers to pay premiums into a giant compensation fund. You pay a small amount of the premiums through payroll deductions; your employer pays the rest; and claims are paid from the fund to all eligible persons.

The claim process is a 2-step process. In the first step, financial eligibility is determined by the PA Department of Labor & Industry. If a person isn't financially eligible, legal eligibility isn't even addressed. The Office of Employment Security uses a formula to find out whether a person, or “claimant,” has made enough wages in the last year to qualify. A finding of financial eligibility triggers the legal eligibility stage of the process.

Legal entitlement to benefits is based on fault. The rule of thumb of legal entitlement is simple—if a person's separation from employment is not his/her fault, and if he/she is willing and able to work, he/she should be entitled to benefits. The law is actually a lot more complex than that, but to determine whether or not a person may be entitled to unemployment benefits and may therefore consider filing a claim, a useful starting point would be to simply ask the question “Was the employee at fault in the loss of his/her job?” If the job loss is found to have been the fault of the employee—or “caused” by the employee—he/she will not be entitled to receive benefits. The two most common reasons for claims being denied are: (1) the employee was fired for committing “willful misconduct” (“causing” his/her job loss by willfully violating a known work rule); or (2) the employee voluntarily quit his/her job, without a very good, or “necessitous and compelling” reason. Some reasons the courts have found to be necessitous and compelling reasons for leaving employment are, for example, to avoid sexual harassment, or to avoid a substantial cut in pay (such as 30% or more).

A denial of benefits based on financial grounds can virtually never be appealed, but an employee can appeal a denial based on legal grounds if the employee believes that he/she was not responsible for the loss of his/her job. And if benefits are granted, the employer can appeal if he/she/it believes the employee was at fault, or walked off the job without good reason. In either case, a prompt hearing before an Unemployment Compensation Referee (Judge) will be scheduled, at which sworn testimony will be heard by the Referee, and relevant evidence received and reviewed. A final decision is issued within 7 days, which can be further appealed up to 3 more times by either party—first to the Unemployment Compensation Board of Review; then to an intermediate appeals court - Commonwealth Court; and possibly (though rarely) to the PA Supreme Court.

Employees and/or employers will find legal assistance helpful at each stage of the process, particularly at the appeal stages. However, a person doesn't have to be an attorney to “represent” a party at a Referee's hearing, and it is not uncommon for employees and/or employers to attend hearings without representation. At the hearing stage, the Referee will be more concerned with facts than legal technicalities. However, the hearing stage will generate the most definitive determination, and it would therefore be unwise for an employee or employer to go into a hearing “cold.”

Keith Kendall has handled more than 100 Unemployment Compensation cases, and is ready, willing and able to assist you in navigating through this complicated area of the law. For more detailed information, and/or for expert representation during unemployment proceedings, contact Scaringi & Scaringi, PC. Please contact us for a consultation at 1-877-LAW-2555.

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