

## Unemployment Benefits For Novices

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An employee's first response to termination is generally panic, which is understandable. It helps to know that although it does not fully compensate an employee for his or her losses from termination, the Division of Labor and Workforce Development's Unemployment Insurance benefits program does provide some relief to unemployed workers—generally sixty percent (60%) of the employee's former salary.

The unemployment insurance benefit system was put into place as a "safety net" for employees. Unemployment was not instituted to provide benefits only to those terminated despite the fact that they were doing a "good job" at work, but also those who had job performance problems. Therefore, since poor performance is not a reason to deprive an employee of unemployment benefits, there are few reasons for which an employee will be denied unemployment insurance benefits.

Initially, however, an employee must be terminated and not resign from employment in order to receive unemployment insurance. The only situation in which an employee can resign and still receive benefits is when he or she can claim that the resignation is due to "good cause attributable to the work." Under *N.J.S.A. 43:21-5(a)* and *N.J.A.C. 12:17-9.1(a)*, an individual is not eligible for unemployment benefits if he or she voluntarily leaves work "without good cause attributable to such work." *N.J.A.C. 12:17-9.1(b)* defines "good cause attributable to such work" as "a reason related directly to the individual's employment, which was so compelling as to give the individual no choice but to leave the employment." "Good cause" can also include harassment or discrimination at the workplace which makes the workplace intolerable.

In addition to having resigned, an employee is disqualified from receiving unemployment benefits if he or she has committed simple misconduct or gross misconduct. Generally, simple misconduct is an action at the job which violates a policy or procedure of the employer and disqualifies the employee for unemployment for seven (7) weeks. Simple misconduct can include such infractions as reporting late to work, not following a work rule or other minor violations of the employer's policies. Gross misconduct is much more severe and may even rise to the level of a crime. This can include employee wrongdoing such as stealing, embezzling, falsifying time sheets or other more major infractions of the employer's work rules. If an employee is found by an unemployment examiner to have committed gross misconduct, the employee will not receive unemployment benefits at all until the employee has worked a certain amount of time in another job.

The unemployment system has various levels, providing several chances for appeal. At the first level an unemployment examiner will initially determine if an employee receives unemployment through a telephone interview with both parties. The employee should be prepared to provide basic information about his or her job to the examiner, including salary information, last day of work, an explanation of the employee's job duties and the reason that the employer told the employee he or she was terminated. If the employee believes that the employer falsified its reason for terminating him or her, the employee should also be able to provide an explanation as to what the employee believes is the real or alternative reason for his or her firing. The employer is also allowed an opportunity to explain the reasons for termination.

After the hearing examiner decides whether the employee receives unemployment, the employee will be notified of the determination within a very short period of time, usually within a week after the initial hearing. The employee then has seven days from receipt of the unemployment decision letter or ten days from the date of that letter to appeal to the next level, the Appeals Tribunal, which hearing is also generally held via telephone. The Appeals Tribunal is misnamed because it only consists of one examiner, although in the past it

consisted of three. In order to receive an appeal, the employee must be able to show that the initial unemployment examiner overlooked some piece of evidence that was important or did not credit some testimony that was important in the original hearing and/or that there is new information not available during the initial hearing that is relevant to the claim.

The final level of review, which has the same appeal time requirements, is the Board of Review. The Board of Review may hear the case telephonically or in some instances, in person. The same prerequisites for granting an appeal also apply at this level. At each level it is more unlikely for the unemployment determination to be reversed, so it is important to initially present your claim in the best way possible.

After the Board of Review level, the unemployment benefits claim can be appealed to the Appellate Division of the Superior Court. The Appellate Division reviews the unemployment decision and determines whether it was decided on an arbitrary and capricious basis. This is an extremely high standard for either party to meet; it's equivalent to being able to show that the prior examiners decided the unemployment benefits determination based on the flip of a coin. Thus, there are few unemployment decisions which are overturned by the Appellate Division. There are also not very many which go to the Appellate Division because of the difficulty in obtaining a finding of "arbitrary and capricious."

For further information on Unemployment Benefits or other Employment Law issues, please contact our Employment Law Team. Stephanie Gironda can be reached at [sgironda@wilentz.com](mailto:sgironda@wilentz.com) or 732.855.6027.

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