



## **CONTROLLING UNEMPLOYMENT CLAIMS: INVOLUNTARY TERMINATION**

One of the more difficult situations employers face, is having to terminate an employee. It is never a pleasant experience and what's worse is if a termination is handled improperly, it can also be very costly to the company.

Today we will discuss the proper steps that need to be taken prior to discharging an employee under circumstances that will be disqualifying for unemployment purposes. Without a plan of action, the employer may find itself paying out unwarranted unemployment claims.

Employers must understand that ending the employment relationship is an involved decision and not one to be made on impulse or emotion. According to the standards set by the various states' departments of labor (including New York) or similar responsible agencies, in order for these agencies to disqualify an employee from receiving unemployment benefits, the burden is on the employer to prove that the employee engaged in an act of misconduct which led to his/her discharge. That is, the employee knowingly disregarded the employer's business interests or engaged in violation(s) of company policy or rule(s).

The agencies will not disqualify an employee from receiving unemployment benefits if the employee was terminated for unsatisfactory performance or by mutual agreement. The only terminating event which is disqualifying is if an employee is terminated for misconduct. In order to demonstrate misconduct the employer will have to show that:

- 1) The conduct of the employee was under his/her sole control
- 2) The employee did not take action to correct or modify his/her behavior
- 3) The employee was aware of the policy or rule(s)
- 4) The employee was previously warned about the consequences of further violations
- 5) The policy or rule(s) were indeed violated. Of course the policy at issue must be necessary to protect the company's business interests and the employer must have always applied the policy to everyone consistently and fairly.

How does one prove that all these requirements were met? Document, Document, Document. With proper documentation employers increase their chances for successfully defending against such claims.

Documentation should contain detailed facts of incidents that occurred and specific reasons for the termination. All documents should be prepared contemporaneously with the event (i.e., at the time of the violation and warning and/or discipline).

Advantages of proper and contemporaneous documentation include the fact that information made when it is freshest in the employer's mind is preserved and available to defend against claims made many months later and solves obvious problems if the employee's supervisor at the time of the discipline is no longer with the company at the time of the employee's termination.



To manage business costs and risk, companies should consider these questions:

- Was the employee aware of the company's expectations?
- Was the employee given counseling and warnings?
- Does the employee know the consequences of his/her actions?
- Was the employee treated fairly and consistently in comparison to others who may have committed the same infraction?

By following these suggestions, employers will be able to take control of potential unemployment claims, reduce costs and maintain proper performance management procedures in the long run.