

Update: December 2010

Unemployment Update

Separations by Mutual Agreement: Quit or Discharge?

We've all heard of it, or even experienced it in our own organizations – an employer and an employee agree to part ways. The conversation may go like this:

Employer: "You're fired!"

Employee: "You can't fire me because I quit!"

Usually the conversation is far less dramatic, but the result is almost always the same. The two parties mutually agree – whatever the reasons – that the employee may be best served by quitting or they will be discharged.

How is this viewed by the unemployment office?

So which is it, a quit or a discharge? Well, many employers may not know this, but just because the employee ultimately says "I quit," it doesn't mean they will really be considered to have left voluntarily for unemployment purposes.

For unemployment purposes, the answer is actually fairly straightforward. An employee must have an opportunity for continued employment to be able to quit the job. So in this case, since the employee would have been discharged had he or she not quit, the separation will be considered a discharge in determining whether or not unemployment benefits will be paid.

What are the unemployment implications?

Since this situation will almost always be viewed as a discharge, you as the employer will similarly almost always be asked to prove that the employee was guilty of some sort of work-related misconduct. In the case of discharges, the employer bears the burden of proving misconduct. What this means is that the employer must show that the employee has violated a known company policy, and that he or she has done so willfully and despite knowledge that it may mean the end of his or her job.

The key for the employer is to make sure that mutual agreement separations are handled like any other discharge situation. Documentation of prior incidents, warnings, and the specifics of any policies violated are critical, as well as all details surrounding the latest and final incident that led to the discharge. In addition, any first-hand testimony from individuals who witnessed the final incident and the separation itself can be essential in establishing the true facts around the case. The more facts and details surrounding any employment situation you can make available to the state unemployment division the better, as it will enable them to make the most informed decision possible.

TALX's experience, expertise, and proven results help employers navigate the uncertainty of the unemployment insurance system. For additional information regarding this article or other proactive unemployment cost management techniques, please visit our corporate blog at <http://blog.talx.com/> or contact Pete Krieshok at 314-214-7325, or by e-mail at pkrieshok@talx.com.