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Unemployment Update – Terminations for Poor Performance

Claims Related to Poor Performance – Can They Be Won?

The answer is yes, but it may not be easy. When deciding whether or not to pay benefits, most states try to determine if an individual's termination for failure to perform was due to their "inability" to do the job or their "unwillingness" to perform the duties required of the job. These are two very different issues and have different implications for unemployment benefit purposes.

Poor Performance – Inability to Do the Job, No Misconduct

Not being able to do a job is generally not considered to involve misconduct. In the case of a new hire, the state agency will assume the employer was not thorough enough in their initial hiring process and simply did not hire someone that would be a good fit for the job. For someone that had been in the position for awhile, the state will try to determine if the expectations associated with the job had substantially changed so that someone who was previously able to do their job can no longer perform. The introduction of new technology, new processes, and/or higher production standards can all have a negative impact on an individual's ability to get the job done.

If the local unemployment office determines the claimant's separation was due to "inability", there will almost always be no disqualification and benefits will be paid, since the non-performance is not willful or intentional and cannot be considered the result of misconduct.

Poor Performance – Unwilling to Perform the Job

Being unwilling to do a job is another situation entirely and can be considered misconduct. Although difficult to prove, with a little bit of effort it can be done. In these types of situations, the employer must demonstrate the employee had been able to perform the duties of their job in the past, meeting or exceeding employer expectations. This can most often be documented by producing a series of positive performance evaluations proving the individual's ability to perform the duties related to their job.

Next, the employer will need to be able to prove that, at some point in time, the former employee intentionally decided to stop meeting those expectations. This can be documented by providing copies of recent unfavorable reviews, which outline the negative changes in job performance. In addition, the employer will need to confirm there had been no changes in the duties and requirements of the position.

The unfavorable reviews should be accompanied by written warnings outlining expected future changes in job performance, along with the time frame in which those changes need to occur. Finally and most importantly, the employee should have been made aware of the consequences (possible termination) if expectations were not met within the prescribed time frame.

By following a few simple guidelines and carefully documenting your interactions with your employees, you can gain disqualifications on claims filed by individuals whose job performance deteriorates over time.

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 contact Pete Krieshok at 314-214-7325, e-mail pkrieshok@talx.com, or visit our corporate blog at <http://blog.talx.com>.