

Handling an unemployment claim

When facing an unemployment claim, the first decision you should make is whether or not you have grounds to contest your former employee's claim.

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IT IS TOUGH BEING A BUSINESS OWNER. You wear many hats and attempt to be all things to all people. Not only are you trying to please your existing customers, you are constantly striving to find new clients to maintain your market share. The last thing you have time to deal with is an unemployment claim. This article will give you an overview of the unemployment claim process and help you evaluate whether or not a current claim should be contested.

The first decision to make is whether or not you have grounds to contest your former employee's unemployment claim. Employees generally are denied all or some unemployment benefits for either one of two reasons: (1) leaving work voluntarily "without good cause" attributable to their work, or (2) being discharged for "misconduct connected with work."

"Without good cause" is viewed from the standpoint of a reasonable person. Courts in Missouri and Kansas look to whether a reasonable person would have acted in the manner that the employee acted when voluntarily leaving his employment. It is up to the employee to prove he left for good cause. If there were any disputes, the employee must prove he made an effort to resolve those issues with you and was unsuccessful.

An employee may also be denied benefits if he was discharged for "misconduct connected with work." In Missouri, misconduct is determined by the circumstances in each case. Some examples include an employee who deliberately decided to operate his motor vehicle while his license was suspended and a convenience store manager who was terminated for failure to follow and enforce accounting procedures.

If you are an employer based in Kansas, the misconduct has to be both willful and intentional, or so careless or negligent that it shows wrongful intent or evil design. This is a higher standard than Missouri's and requires you to provide specific proof of willful and intentional acts on the part of the employee.

The claims process for both Kansas and Missouri are similar. Once a former employee files a claim for unemployment benefits, the last employer as well as any other past employers may be included. Notification of the former employee's claim is then sent out to the previous employer. In Kansas, the notice is simply titled "Employer Notice" and in Missouri, referred to as a "Claim Notice." If in your judgment, the former employee is not entitled to benefits, both Kansas and Missouri require a protest to be filed within 10 days.

To obtain a determination in your favor, your protest of the unemployment claim should include factual and specific reasons

for the employee's separation from work. Examples of the documentation you should provide include the following: statements by the former employee regarding his intention to quit and complaints made by the former employee about his work, such as requesting a transfer or a request for a leave of absence.

If an employee was discharged for misconduct in connection with work, you need to include in your protest all incidents of unsatisfactory conduct which played a part in the disciplinary action, such as warnings, reprimands, gross negligence, absenteeism, willful inefficiency and dishonesty. At this point, a hearing officer will review the claim and any protests which have been filed and make a determination. The former employer will receive a copy of that determination, and in Missouri, if you do not agree with the officer's decision, you have 15 days from the date the determination is mailed to file an appeal. Kansas allows 16 days to file such an appeal.

Once on appeal, the matter is set for a hearing before an Appeal Referee. This is an important stage in the process, as it may be your only opportunity to present your side as to why the employee left. If you are a sole business owner, you must either appear in person or have a licensed attorney appear for you. If you are a partnership, then a partner must appear in person or a licensed attorney for the partnership must appear. Obviously, if no one appears at the hearing, the appeal will be dismissed.

It goes without saying, for your appeal to be successful, prepare by gathering all the documentation that supports your position, arrange for necessary witnesses to be present, and if represented by an attorney, make sure your attorney has all the necessary documentation and assistance to support your cause. This will be your only opportunity to present first-hand evidence to present your point of view.

After the hearing is concluded, the Referee will consider the evidence and prepare a written decision, which will be mailed. The decision becomes final within 15 days in Missouri and 16 days in Kansas. If you wish to further appeal the decision, you must do so within these time frames.

This article is intended to give you a general overview and should by no means be treated as a complete treatment of all unemployment problems. Each situation is different, and you should consult with legal counsel if you have any concerns about how a particular situation should be handled.

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