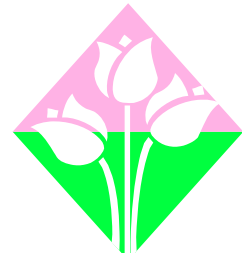




Happy Spring!

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“Tip of the Month”

The High Cost of Letting Go: Contesting Unemployment Claims of Former Employees

Employee turnover is a natural occurrence at any business. What many business owners do not realize, is just how costly a former employee can be.

The cost of parting ways with an employee includes the indirect costs associated with having to pay state and federal unemployment tax. Because businesses are taxed according to past claims, the more former employees a company has collecting unemployment, the higher the company's taxes are going to be. For this reason, a prudent business owner will scrutinize claims by former employees, and will contest them when warranted.

After a former employee files a claim with the NH Department of Employment Security (DES), the business owner will receive a Notice of Unemployment Insurance Claim Filed. This Notice provides a copy of the former employee's claim and an opportunity to respond. The employer's response should be accurate, thorough, and prompt.

The three usual types of separation are (1) layoff; (2) termination; and (3) voluntary quit. Because contesting a claim will cost the employer time and money, one must assess the likelihood of success before contesting. In contesting the termination case, this assessment should consider: (1) why the employee was terminated; (2) whether the employer has evidence supporting the termination; and (3) whether the employee is likely to request a hearing.

Layoff almost always entitles the former employee to unemployment benefits. Voluntary quit almost never allows unemployment compensation, unless the employee felt forced to quit by the employer's misconduct.

Termination for cause such as for misconduct, policy violation, drug or alcohol use, etc., if properly documented, enhances the employer's likelihood of success in contesting the claim. If the employee was terminated for a lesser cause, such as poor performance, the employer may still contest the claim, but is less likely to prevail unless the employer's documentation is strong.

After DES renders its decision, it will mail the Notice of Determination to both parties, who are afforded an opportunity to appeal.

In the event of an appeal, both parties will receive a Notice of Hearing from DES with the date, time and place of the hearing. Employers should plan to provide sufficient evidence and argument from the outset, with a full understanding of the issues involved. They should have supporting documentation and, if possible, knowledgeable witnesses.

For more information on unemployment compensation and employer liability in general, please contact the attorneys at Mesmer & Deleault, PLLC at 668-1971, or contact us by email at mailbox@biz-patlaw.com.

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