

Unemployment Compensation Claims



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Unemployment Compensation - *What Is It?*

- Social legislation
 - To assist unemployed workers
 - Between jobs
 - Through no fault of their own
 - Funded by employers through taxes and reimbursements
 - Employers may not deduct any money from employee's paycheck for unemployment insurance
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UI FYI

- More UI claims than all other employment-related claims and lawsuits combined
 - All 50 states have similar systems under federal guidelines from US Department of Labor
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The Texas Unemployment Compensation Act

- An employer is covered if
 - It paid as much as \$1,500 in wages in any calendar quarter of the preceding year
 - It employed at least one individual for some portion of the day in each of 20 different days, each day being in a different calendar week
 - Numerous other qualifying conditions
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Examples of Employees Exempted from Coverage

- Domestic service employees
 - Fishing vessel crew members
 - Student nurse or intern employed by a hospital
 - Employee of immediate family member
 - Employee of church or religious organization
 - Students working for schools, colleges, and universities
 - Seasonal farm or ranch workers
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Eligibility Requirements

- There are three primary requirements for eligibility
 - Past wages
 - Separation from work
 - On going availability and work search
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Past Wages

- Determined by “base period”
 - First 4 of last 5 calendar quarters prior to separation
 - Receipt of wages
 - Claimant must have earned at least 37 times the weekly benefit amount during the base period
 - If an employee qualified and received benefits on a prior claim, he must have earned six times his current computed Weekly Benefit Amount since then
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How are Benefits Determined

- The claimant's weekly benefit amount is determined by dividing the wage total of the highest calendar quarter during his base period and dividing that total by 25.
 - The weekly payment is called the Weekly Benefit Amount (WBA)
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Limit on Taxable Wages

- Only the first \$9000 ("taxable wages") of an employee's earnings is subject to the state UI tax in Texas
 - Only \$7000 of that will be subject to the federal UI tax
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Taxable Wages Include

- Included in the definition of “taxable wages” are:
 1. All pay for personal services;
 2. The cash value of pay in a medium other than cash (meals, lodging, and other facilities, furnished as part of the job);
 3. Tips that are considered wages under the Federal Unemployment Tax Act—which is most
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Taxable Wages do not Include

- Excluded from the definition of “taxable wages” are:
 1. pay in excess of \$9000 in a calendar year;
 2. retirement plan contributions or payments;
 3. sickness/accident disability plan payments or benefits;
 4. death-related expenses; and
 5. other non-work-related payments by employer.
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Reason for Separation

- Ineligible for unemployment compensation if:
 - Terminated *for good cause connected with the work*
 - Resigned or Quit *without good cause connected with the work*
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Employee Qualification

- The claimant must be out of work through no fault of his or her own
 - The burden of proof is on the party who initiates the work separation
 - if the claimant quit, the claimant must prove good cause connected with the work for quitting
 - if the claimant was fired or laid off, the employer must prove that the work separation resulted from misconduct connected with the work on the claimant's part
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Available for and Searching for Work

- Actively searching
 - Applying for and accepting work
 - Physically able
 - Registering for work
 - Available for work
 - Calling or reporting to the TWC when requested
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Primary Reasons for Disqualification

- voluntary quit for personal reasons
 - discharge for misconduct connected with the work
 - refusal of suitable work without good cause
 - work stoppage resulting from participation in a labor dispute
 - receipt of wages in lieu of notice, workers' compensation, or retirement/pension
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Refusing Work

- Refusing a “suitable job” is determined by examining:
 - Claimant’s qualifications and training
 - Working conditions of similar work in the area
 - Risk to Claimant’s health, safety or morals
 - Distance from home
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Discharge for Misconduct

- In any case involving alleged misconduct, the employer must prove two primary things:
 - That the discharge occurred as the direct result of a final incident that happened close in time to the discharge
 - That the claimant either knew or should have known that he could be fired for such a reason
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Voluntary Quit

- In any voluntary quit case, the employer must show three main things:
 - continued work was available at the time of resignation
 - claimant left for personal reasons unrelated to the work, or if she left for work-connected reasons, a reasonable employee would not have quit for such a reason
 - claimant left without giving the employer a reasonable opportunity to resolve whatever grievance she may have had
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The Claim and Appeal Process

- Initial claim determination
 - No evidentiary hearing (14-day response deadline)
 - Appeal to the Appeals Tribunal
 - Evidentiary hearing “de novo” by teleconference
 - Appeal to the TWC
 - No hearing, the Commission examines the record
 - Appeal to Court
 - “Substantial evidence on the TWC record as a whole” by trial *de novo*
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Relationship to Other Laws

□ Worker's Compensation

- Receipt of temporary or lifetime worker's comp benefits prevents a "double dip"

Labor Disputes

- Strikers don't receive unemployment compensation unless otherwise qualified, e.g., lockout or resignation for good cause

Mistakes to Avoid

- Terminating an employee in the heat of the moment
 - Failing to discuss the problem with the employee prior to termination or to consider mitigating factors
 - Ignoring company procedures regarding discharge and discipline
 - Failing to present all evidence and witnesses to Appeals Tribunal
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Wrap Up

- The TWC likes to see documentation of “progressive discipline” and a written “progressive discipline” policy in “for cause” discharge
 - Be precise regarding the exact reason for discharge
 - Pay attention to deadlines in responding to UI claims or appealing TWC decisions
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Resources for Employers

- The Texas Workforce Commission provides employers with online resources and information
 - <http://www.twc.state.tx.us/customers/bemp/bempsub2.html>
- The TWC's maintains an employer hotline
 - 1-800-939-6631