

Texas Unemployment Compensation Act

Texas unemployment compensation law, like that of many other states, provides temporary payments to employees who lose their jobs through no fault of their own. The law is administered by the Texas Workforce Commission (www.twc.state.tx.us). In effect, some Texas employers can actually be liable for unemployment payments even though their former employee quit.

Employers who don't believe a former employee is eligible for unemployment compensation must fill out the form that they receive when the former employee files a claim. Do so within 14 days or you will lose any right to contest the claim.

Once you file the form, the matter will then be set for a hearing, usually by phone. You should be prepared to prove that you fired the former employee for a solid reason—for cause—such as stealing, cheating, harassment or discrimination against another employee, or ignoring safety cautions.

The general rule is that former employees are eligible for unemployment compensation when they're not responsible for their dismissal, or if conditions beyond their control forced them to quit. In other words, unless you fired the person for cause, he or she is probably eligible for the unemployment payments.

Tricky scenarios

Here are some common tricky situations in which employees who quit can still sometimes collect unemployment benefits.

Communicable disease. In Texas, employees who quit to avoid providing services to someone with a communicable disease lose their eligibility for unemployment compensation. But the quitting employee can earn benefits if he or she can show that the employer didn't provide the necessary equipment or safety procedures to prevent the employee from becoming infected.

Personal illness, family illness. Employees are still eligible for benefits if they voluntarily leave a job due to a medically verifiable illness, injury, disability or pregnancy, or because the employee's minor child was ill, injured or disabled.

In the case of a sick child, if the employer allowed the employee reasonable time off, the parent would not be eligible for unemployment. In other words, the law is meant to protect wages for parents who have no practical choice but to quit because their employer refused to help.

Trailing spouse. In this age of dual-career families, a husband or wife may quit a job when the spouse accepts a job in another city or state. In Texas, however, the trailing spouse will lose at least six weeks (but not more than 25 weeks) worth of benefits.

Leaving for personal reasons. Employees who leave for compelling personal reasons related to their job are also eligible for payments. But the reason for leaving must be urgent, compelling and so necessary as to make separation involuntary.

If an employee quits because of discrimination, harassment or the like, he or she may be eligible. The person would have to show that he or she had no reasonable alternative. Also, employees who can show that their employer breached the employment agreement have valid reasons. **Tip:** This type of UI claim is a red flag indicating that a discrimination lawsuit is probably next. Be sure to consult an attorney right away.

Leaving to avoid family violence or stalking. Employees who quit to avoid family violence are still eligible for UI

benefits if they can show: (1) They asked for or received a protective court order; (2) there is a criminal record showing abuse; or (3) a physician can document past violence.

Becoming eligible after a voluntary quit. Texas employees who quit and aren't eligible for benefits can regain their eligibility by working for a new employer for either six weeks or for at least 30 hours per week, or by earning at least six times their weekly benefit. If the employee then loses that new job, eligibility is restored.

Reasons to deny benefits

The following list includes common reasons an employee may be denied unemployment compensation benefits. The reasons fall into two broad categories: misconduct on the job and post-discharge conduct.

Absenteeism and tardiness. To claim this as the reason to deny payments, employers must show that they warned the employee before discharge. Generally, if employees have a good reason for missing work, they're still eligible for benefits. (Good reasons include being sick or having an ill child.)

This is another situation in which clear workplace rules on absenteeism are important. For example, if you can show that an employee didn't follow your reasonable call-off procedures, he or she may be ineligible even though the underlying reason for being absent was legitimate.

Going on strike. In Texas, going on strike makes an employee ineligible for UI benefits. That's true even if the employee loses his or her job because others in the group went on strike but he or she didn't.

Rule violation. Deliberately breaking rules is another example of misconduct that justifies denial of benefits. Be prepared to show that the employee knew about the rule and ignored it anyway.

Disruptive influence. If you can show that an employee's disruptive behavior is adverse to your interests as an employer, the employee may be denied benefits. Examples include harassing behavior and name-calling.

Damage to equipment or property. Negligent or purposeful damage to equipment makes the employee ineligible for benefits.

Misconduct. Under Texas law, misconduct that makes an employee ineligible for benefits means "mismanagement of a position on employment by action or inaction, neglect that jeopardizes the life or property of another, intentional wrongdoing or malfeasance, intentional violation of a law, or violation of a policy or rule adopted to ensure orderly work and safety of employees."

Failure to return to work. Employees must make a diligent effort to find a replacement position and be willing to return to work if the employer asks.

Representing your organization at a UI hearing

Under Texas law, employers and employees may participate in an unemployment compensation hearing alone, with an attorney or with the help of someone else who is well versed in unemployment compensation rules. That means even nonlicensed attorneys, law students and paralegals can represent either party at the UI hearings.

Caution: What you say about your organization's actions at such hearings can come back to haunt you later, especially if the former employee is represented by an attorney who is using the relatively low-stakes unemployment setting to fish for information for a later lawsuit against your organization. What you say about why you fired an employee may bind you in a later, high-stakes lawsuit.

For example, if you testify that you fired an employee for cause because she was absent too often, the records you produce about her reasons for being absent can be used later to show you violated the FMLA when you counted a sick-child call-off as an unexcused absence.

That's why it's best to run your expected testimony and documentary evidence by an attorney before you represent your employer. You don't want to say something now that will be used against you later, or be silent about something now that will prevent you from putting on evidence later.

Sometimes, it may be best to have an attorney handle the entire UI case. Other times, if you and your attorney think there is a good chance that the former employee will file a state or federal discrimination lawsuit, it may be better to forgo a hearing in order to avoid showing your cards too early. Not contesting an unemployment claim won't prevent you later from showing you fired the employee for a legitimate reason.

Excerpted from Texas' 10 Most Critical Employment Laws, a special bonus report available to subscribers of HR Specialist:
Texas Employment Law.