Florida Unemployment Compensation Law

Florida's 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 program draws from a public policy that assumes "unemployment is a serious menace to the health, morals and welfare" of the citizens of Florida and is aimed at lightening the job-loss burden for workers and their families.

The Florida Unemployment Compensation Law is complex and in some cases holds employers liable for unemployment insurance (UI) payments even when former employees weren't fired but quit their jobs.

The law requires employers to post workplace notices on unemployment benefits, rights and claims. (You can obtain notices as well as all required employer forms from the Florida Agency for Workforce Innovation at ***www.floridajobs.org/***.)

Editor's Note: Read more essential information about unemployment compensation law in Handling Unemployment Claims the Legal Way.

Employees who are eligible for unemployment payments are entitled to 50 percent of their average weekly wages, up to a maximum of $275 per week, and can ordinarily collect payments for up to 26 weeks. Employees who find part-time work while on unemployment may still be eligible, but their payments will be reduced dollar for dollar once they earn at least eight times the federal minimum wage.

Not every employee who loses his job can expect to collect unemployment. As a general rule, former employees are eligible for unemployment compensation when they're not responsible for their dismissal. In other words, unless a company fired them for misconduct, they're probably eligible for benefits.

When you terminate an employee, the burden of proof is on you. That may sound simple, but it isn't. Be prepared to prove that you fired the former employee for a solid reason (for cause), such as stealing, cheating, harassing or discriminating against another employee, failing a drug test or ignoring safety precautions.

Employees who quit may still be eligible for benefits, but the burden of proof is on them to show that they resigned "for good cause" connected with their employment.

As the employer, you will receive notice when the Agency for Workforce Innovation determines a former employee is eligible for UI benefits. You have the right to appeal the decision. Make sure you postmark your response within 20 days of the date you received the notice or 20 days after the agency mailed it. These are tight deadlines, so don't delay.

Tricky scenarios for eligibility

Here are some common tricky situations in which employees who quit or were fired may sometimes be eligible for UI benefits.

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Misconduct. Employees who are fired for misconduct (violating a company rule or policy) aren't entitled to benefits right away. But their disqualification lasts for only about six weeks (the week of their discharge plus the next five weeks). After that period, they can start collecting benefits.

Trailing spouse. In this day of dual-career families, a husband or wife may quit a job when the spouse accepts a position in another city or state. While some states do allow unemployment benefits for a trailing spouse, Florida doesn't consider this a good cause connected with work. Therefore, the trailing spouse wouldn't be eligible to collect unemployment. The only exception: when a spouse on active duty in the military is moving under orders.

Retirement pay. Employees who are eligible for social security retirement benefits can still collect unemployment. If they begin collecting on a company-sponsored retirement plan, however, their weekly benefits may be reduced:

- If the company and the employee both contributed to the retirement plan, weekly unemployment benefits would be reduced by 50 percent.
- If the employer contributed 100 percent to the retirement plan (such as a defined benefit plan), the employee couldn't collect unemployment.
- If the employee contributed 100 percent to the plan (such as a company-sponsored 401(k) with no employer match), he or she would be eligible for the entire weekly UI payment.

Visa holders. Foreign citizens working in the United States on H-1B visas aren't entitled to unemployment benefits if their employers permanently terminate them. That's because H-1B visa holders are authorized to work for only one employer and thus wouldn't be ready, willing and able to seek other employment. But if the same workers are only temporarily laid off and have a specific return date, they can collect unemployment.

Ready and able to work. To be eligible for UI benefits, claimants must be physically and mentally capable of working. So, if someone on unemployment is hurt in a car accident, for example, her benefits will stop until she's been cleared to return to work.

Elder care, child care and transportation. Claimants who must care for family members or don't have transportation to and from work may not be eligible for benefits. Because they have time commitments and transportation problems that prevent them from accepting a job immediately, they're not ready and able to work.

Active job search. To receive benefits, claimants must actively seek work: i.e., contact at least three employers per week about job openings. Some claimants may be asked to keep records of their attempts to find a job.

Refusing a job offer. Claimants who refuse to accept a job offer may lose their benefits. They may also have to accept less money or a different type of job if they've been unemployed for a long time.

Job transfer. If an employer relocates a business or asks an employee to transfer to another location as a condition of staying employed, the employee may quit and be able to collect unemployment. Each case is considered on an individual basis and depends on whether the move will create an undue hardship on the employee.

Representing your organization at a UI hearing

Employers should carefully consider whether they want to contest an unemployment claim and, ideally, consult an employment-law expert about the best course of action. That's true especially if you suspect the employee will file a discrimination lawsuit against your company. What you say about your organization's actions can

come back to haunt you, especially if the former employee's attorney uses the relatively low-stakes unemployment setting to fish for information for a lawsuit against you. Your stated reason for firing an employee may bind you in a later, high-stakes suit.

For example, if you testify that you fired an employee because of frequent absences, the records you produce could be used later to show you violated the FMLA by counting that 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 representing your organization at a hearing. You don't want to say anything that could turn into ammunition against you later, or be silent about something that will prevent you from putting on evidence later.

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

Excerpted from Florida's 9 Most Critical Employment Laws*, a special bonus report available to subscribers of HR Specialist:* **Florida Employment Law**.

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