

Do we need an attorney to represent us during unemployment comp hearings?

Q. Should a Texas employer hire an attorney to represent it in an unemployment compensation proceeding where the claimant is represented by counsel?

A. Probably not, unless you believe that the claimant is likely to bring any other type of action against the employer or there are other unusual circumstances.

Although the hearing decision is inadmissible in other proceedings, the other side later can use the testimony and documents heard and introduced in the unemployment compensation hearing.

The system is designed to allow a layperson access to and participation in a relatively straightforward procedure. Unemployment compensation hearings are conducted in a question-and-answer format. Witnesses are placed under oath.

Because testimony will be recorded and available in later court proceedings, it is crucial that managers prepare well. Your attorney can help managers prepare for the hearing by advising them how to clearly answer questions without inviting misinterpretation.

Whoever testifies for the company should clearly and fully explain why the employee was terminated. *Here's why:* If in a later lawsuit, the company adds reasons or comes up with a different explanation, attorneys representing the employee can try to use the changes as pretext evidence. That is, the attorney could say that the company is manufacturing reasons to try to cover up an illegal motive or reason.

If you do think that the employee may have plans to sue the company, it may be a good idea to have your counsel present. An attorney can help you work within the hearing process to ascertain the claimant's purposes beyond matters of unemployment compensation.

If you think the employee may make some other claim, you should consult counsel about how best to proceed. If you decide to have your attorney attend the hearing, he or she may be able to prevent the other side from asking questions that are meant to build a later case against the company, but which have little to do with the unemployment compensation hearing.

Note: Most unemployment claimants do not have counsel at these proceedings. However, when a lawyer represents a claimant, there is a fair chance that the claimant anticipates proceeding in another manner against the employer, whether related to the claim of unemployment benefits or not. If your first inkling that the employee has an attorney comes when you arrive at the hearing, you should proceed with extreme caution.