



LABOR AND EMPLOYMENT LAW ALERT

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Significant Amendments to Florida's Unemployment Compensation Law

According to Florida's Department of Revenue, 75,832 employers went out of business in 2010 and the state's unemployment rate has been nearly 12% for the last year. The staff of the Florida House of Representatives' Finance and Tax Committee estimates these stresses caused the unemployment compensation fund to become insolvent in 2009. The House Finance and Tax Committee reports that since 2009, Florida has borrowed from the federal government \$2 billion to pay unemployment compensation benefits.

Against this backdrop, by the time it adjourned on May 7, 2011, the Florida legislature had adopted the most significant revisions to Florida's unemployment compensation law in recent memory. The changes were accomplished not by completely rewriting the existing law, but by strategic amendments to definitions and eligibility requirements. To highlight the significance of the amendments, the legislature directs that the statute "shall be liberally construed to accomplish its purpose to promote employment security by increasing opportunity for

reemployment and to provide, through the accumulation of reserves, for the payment of compensation to individuals with respect to their unemployment." This rule of construction marks a sea change from the prior version of the unemployment compensation law which required that it be liberally construed in favor of the claimant.

Employee Misconduct: More Inclusive and Less Restrictive

One of the amendments, which might come as a surprise to those applying for unemployment compensation, is the definition of "misconduct." A change to the definition of "misconduct" is important because if an employee has engaged in "misconduct" the employee is ineligible for unemployment compensation. The amended definition extends "misconduct" beyond the workplace and working hours and now captures actions "irrespective of whether the misconduct occurs at the workplace or during working hours." An employee also may be disqualified on the basis of "misconduct" by having demonstrated a "conscious disregard of the employer's interest and found to be a deliberate violation or disregard of the

reasonable standards of behavior which the employer expects of his or her employee." The "conscious disregard" standard is easier met than the previous "willful or wanton" standard.

Chronic absentees or tardiness are now included within the arsenal of "misconduct." An employee has engaged in misconduct if he or she is chronically absent or tardy "in deliberate violation of a known policy" or has "one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence."

Finally, an employee's "misconduct" now may include violating an employer's rules – whether written or oral. However, the employee can challenge a claim of "misconduct" based on a rule violation by demonstrating: "he or she did not know, and could not reasonably know, of the rule's requirements; the rule is not lawful or not reasonably related to the job environment and performance; or the rule is not fairly or consistently enforced."

Skills Review Required: Just What Can You Do?

As a condition for receiving

unemployment compensation, the amended law requires claimants to participate in a "skills review." The skills review is an online education or training program for measuring a person's workplace skills. The development of the skills review has been left to the Agency for Workforce Innovation, the agency which administers Florida's unemployment compensation laws. The amended legislation mandates that the skills review be used "to develop a plan for referring individuals to training and employment opportunities." If a claimant does not complete the skills review, the person is "ineligible for benefits the week in which the noncompliance occurred and for any subsequent week of unemployment until the requirement is satisfied." If the claimant can demonstrate that their failure to complete the skills review is due to illiteracy or a language impediment, then compliance is not required.

Job Searches: Report and Confirm

The amended legislation requires that an employee be "available for work." To demonstrate availability for work, the employee must engage in a "systematic and sustained effort[] to find work, including contacting at least five perspective employers for each week of unemployment claimed." If proof of the job search is provided

to the Agency for Workforce Innovation, it is mandated to conduct random reviews of the "work search information provided by claimants." Alternatively, a claimant can report to a one-stop career center for assessment of reemployment services of the center.

Criminal Violations and Incarcerations

Any claimant who has been terminated for violation of a criminal law in relation to the claimant's work is disqualified from benefits if there was a conviction or plea of guilt or nolo contendere. Under the 2011 amendments, the disqualification has been enlarged to include a violation of criminal law "under any jurisdiction." Also, the 2011 amendment makes anyone incarcerated or imprisoned ineligible for unemployment compensation during the weeks of incarceration or imprisonment.

Following an arrest and even before final determination of criminal charges against a former employee, a former employer may challenge the eligibility for unemployment compensation benefits. Under the amended legislation, "[i]f, before an adjudication of guilt, an admission of guilt, or a plea of nolo contendere, the employer proves by competent substantial

evidence to the agency that the arrest was due to a crime against the employer or the employer's business, customers, or invitees, the individual is not entitled to unemployment benefits."

Reduction in Total Weeks Benefits

Finally, the 2011 amendments reduce the number of weeks of benefits available to claimants. Under the amended law, a claimant's eligibility for employment compensation ends after 23 weeks if the state's average unemployment rate equals or exceeds 10.5 percent.

The legislation was adopted on May 6, 2011 and signed into law by the Governor on June 27, 2011. ■

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