



Pennsylvania Unemployment Compensation Newsletter

Thomson, Rhodes & Cowie, P.C. Two Chatham Center, 10th Floor, Pittsburgh, PA 15219

(412) 232-3400

UC Workplace Posting Mandatory in Pennsylvania

UNEMPLOYMENT COMPENSATION

Under the provisions of the Pennsylvania Unemployment Compensation (UC) Law, I am registered with the Pennsylvania Department of Labor & Industry as:

NAME: _____
ADDRESS: _____

The UC Law provides you with an income during periods when you are either partially or totally unemployed through no fault of your own.

IMPORTANT

YOUR UC APPLICATION WILL BE DATED EFFECTIVE THE WEEK IN WHICH YOU ACTUALLY FILE THE APPLICATION FOR BENEFITS.

YOU SHOULD FILE A NEW APPLICATION OR REOPEN AN EXISTING CLAIM DURING THE FIRST WEEK IN WHICH YOU ARE UNEMPLOYED OR YOUR HOURS ARE REDUCED. WAITING MAY JEOPARDIZE YOUR ELIGIBILITY FOR BENEFITS.

TO FILE AN APPLICATION FOR UC BENEFITS, YOU WILL NEED:

- YOUR SOCIAL SECURITY NUMBER
- YOUR PA DRIVER'S LICENSE NUMBER (IF YOU HAVE ONE)
- YOUR ALIEN REGISTRATION NUMBER (IF YOU ARE NOT A U.S. CITIZEN)
- NAME AND ADDRESS OF EMPLOYER(S)
- YOUR EMPLOYER INFORMATION FORM (IF YOU HAVE ONE)
- YOUR MAILING ADDRESS
- DATES OF EMPLOYMENT AND REASONS FOR LEAVING
- YOUR MOST RECENT PAY STUB (OPTIONAL, BUT HELPFUL)
- YOUR PIN (IF YOU HAVE ONE)

YOU MAY FILE YOUR NEW APPLICATION OR GET INFORMATION ABOUT THE UC PROGRAM ONLINE AT:

WWW.DLI.STATE.PA.US
KEYWORD: UNEMPLOYMENT

YOU MAY FILE YOUR APPLICATION OR GET INFORMATION ABOUT THE UC PROGRAM BY CALLING THE UC SERVICE CENTER IN YOUR AREA TOLL FREE 888.313.7284 | TTY (HEARING IMPAIRED) 888.334.4046

When filing your application for UC Benefits, you must report gross wages you earned during any week for which you are applying for UC Benefits.

Remember: Whenever you have questions or any problem regarding your UC Application, contact your UC Service Center. Do not take outside advice. Outside advice may be incorrect and could adversely affect your eligibility to receive UC Benefits.



WARNING

IF YOU MAKE FALSE STATEMENTS IN CONJUNCTION WITH A UC CLAIM YOU MAY BE DISQUALIFIED FROM RECEIVING BENEFITS AND MAY BE SUBJECT TO SEVERE PENALTIES, INCLUDING CRIMINAL PROSECUTION, FINES AND INCARCERATION.

Auxiliary aids and services are available upon request to individuals with disabilities. Equal Opportunity Employer/Program

Unemployment Compensation Form No. UC-700 (Rev 10-08), required of all public employers in Pennsylvania. State government employers are required to post Form No. UC-700 A (Rev 1-04).

Pennsylvania employers are required to post certain notices in their worksites in a conspicuous place so that the notices can be easily seen and read by employees. The purpose of the notices is to provide all Pennsylvania employees with access to and information about labor laws applicable to their employment.

One such mandatory posting relates to unemployment compensation. All public sector employers are required to post Form UC-700 (set forth at left). State government agencies, departments, commissions and bureaus are required to post Form UC-700A. Both forms, as well as the other mandatory postings, may be downloaded for free from the PA Labor & Industry website.

PLEASE NOTE: Failure to post the mandatory notices can result in stiff penalties and possible fines. All employers would be well advised to review the mandatory posting requirements as set forth in the Department of Labor & Industry's website to make certain that they are in compliance with the law.

COMMONWEALTH COURT CASE REVIEWS

Samantha Roman-Hutchinson v. Unemployment Compensation Board of Review, No. 2112 C.D. 2008, Filed May 11, 2009 ♦ Claimant attempted to appeal a referee's denial of her benefits by email. The UC authorities did not receive the emailed appeal, but did receive a faxed appeal from claimant after the appeal period had expired. The UCBR concluded claimant's appeal was untimely and dismissed the appeal for lack of jurisdiction. Claimant argued to the Commonwealth Court that, because she had proof that her appeal was sent to the correct email address in a timely fashion, she overcame the contention that the UC authorities had not received a timely copy of her appeal. The Court disagreed. Although the "mailbox rule" applies to mailings via the post office, the Department's regulation at 34 Pa. Code §101.82(b)(4) provides that: "*The date of filing is the receipt date recorded by the Department appeal office or the [UCBR's] electronic transmission system...A party filing an appeal by electronic transmission is responsible for ...delay, disruption, interruption of electronic signals...and accepts the risk that the appeal may not be properly filed.*" The dismissal of claimant's appeal was affirmed.

Alexander W. Roberts v. Unemployment Compensation Board of Review, No. 1989 C.D. 2008, Filed June 8, 2009 ♦ Employer provides residential services to individuals with special needs. Claimant, a client care worker, was responsible for "one-to-one" care for a resident who required "close reach supervision...at all times due to behavioral concerns." Claimant left the resident secure in his bed and went to retrieve the resident's breakfast. Claimant's supervisor found the resident unattended and discharged claimant for willful misconduct. Claimant was denied unemployment compensation benefits. Claimant appealed. The Referee found that claimant's conduct did not rise to the level of willful misconduct. The UCBR reversed, noting that claimant had not shown good cause for leaving the resident unattended. The Commonwealth Court disagreed. "Good cause" is established where the action of the employee is justified or reasonable under the circumstances. Taking action to advance a patient's health and safety will constitute good cause to violate an employer's work rule. Claimant was responsible for the proper feeding of the resident. Claimant acted in the best interest of both employer and resident by leaving the resident for a brief time to obtain his

breakfast. The order denying benefits was reversed.

Thomas Edison State College v. Unemployment Compensation Board of Review, No. 2284 C.D. 2008, Filed August 26, 2009 ♦ Claimant was separated from Huntingdon Learning Center where she had been employed as a full-time Director. During the time she worked for Huntingdon, she also performed mentoring services for employer. The UC authorities issued a notice of financial determination indicating that she was eligible for benefits, but did not include earnings from employer in its calculation of benefits. Claimant filed an appeal claiming that consideration of her earnings from employer were necessary to complete her base year earnings report. The Referee agreed that claimant was an "employee" under §402(e) of the Law. Employer appealed arguing that claimant was an independent contractor. The Commonwealth Court noted that an individual is ineligible for benefits if he is engaged in self-employment. A 2-pronged test is set forth in §4(1)(2)(B) to determine if an individual is an employee or a self-employed independent contractor: 1) Is the person free from control and direction in the performance of the work; and 2) Is the business one which is customarily engaged in as an independent trade or business. Here, claimant was an online mentor to students. Employer gave her a handbook containing general suggestions and quality standards. She was required to check employer's website 2-3 times per week. The Court found that this was not such control over time, place and performance of her services so as to make claimant an employee. Further, claimant testified that she was an independent contractor, she did not receive any training from employer, employer did not monitor her work or review her performance, she was not guaranteed a specific number of students to mentor, no taxes were deducted from her paycheck and she was issued an IRS Form 1099. Thus, claimant was free from employer's control in the performance of her services. The order, which included earnings from employer in her base year, was reversed.

Marc D. McKenna v. Unemployment Compensation Board of Review, No. 797 C.D., 2009, Filed September 29, 2009 ♦ Claimant sought review of an order of the UCBR which affirmed the referee's denial of federally funded Emergency Unemployment Compensation (EUC) benefits. The

referee noted, that in order to be eligible to receive EUC benefits under §202(a)(5) of the EUC Act, the total wages in the base year of a regular claim for unemployment compensation must equal or exceed one and one-half the wages in the highest quarter of the base year. Claimant's wages in the highest quarter of his base year were \$21,741. Therefore, in order to qualify for EUC benefits, he needed total wages in his base year of \$25,389. Claimant did not have such wages and was found to be financially ineligible. The UCBR and the Commonwealth Court agreed. Claimant argued that the highest quarter in his base year reflected a bonus of \$2,500 and earnings of \$700 that he had actually earned in the prior quarter, but were not paid to him until the next quarter. Again, the Court was not persuaded. Although Congress set forth the framework under which EUC benefits are administered, the states are given some authority with respect to eligibility. The PA General Assembly established the requirement of one and one-half times the highest quarter for total wages. Further, the PA General Assembly has defined "wages" as "remuneration paid." Thus, wages are included in the quarter in which the employee receives them, not in the quarter in which the wages are earned.

Green Tree School v. Unemployment Compensation Board of Review, No. 7 C.D. 2009, Filed October 19, 2009 ♦ Green Tree School is a private school for children with autism and emotional disturbances. Claimant worked for 7 years as the Director of Education. During her tenure, claimant's life partner was hired as the Behavior Coordinator. In May of 2008, the Board of Directors advised claimant that the Behavior Coordinator's position was being eliminated. Claimant believed that the elimination of the position endangered the physical and emotional safety of everyone on the campus and was evidence of clear discrimination against those choosing non-heterosexual lifestyles. Claimant told the Board that she was resigning if the Board did not reconsider its decision. The Board declined to reconsider its decision to eliminate the position and accepted claimant's resignation. Claimant applied for unemployment compensation benefits. Although the Referee and the UCBR found that claimant had necessitous and compelling reasons for resigning, the Commonwealth Court disagreed. While an unsafe work environment can give an employee a necessitous and compelling reason to resign, "fears" alone are insufficient. There must be proof that the workplace is dangerous to the individual seeking benefits, not to other employees. Here, there is a

disconnect between the harm posited by claimant and her personal safety. Additionally, claimant failed to preserve her employment. Her ultimatum to the Board cannot be considered a sincere effort to preserve the employment relationship. The decision granting benefits was reversed.

Joseph P. Maher v. Unemployment Compensation Board of Review, No. 1843 C.D. 2008, Filed October 27, 2009 ♦ Claimant, an attorney, was discharged by his employer for failing to timely file a complaint. Claimant had a history of failing to take appropriate action and ignoring deadlines. His supervisor had repeatedly reminded him that a complaint needed to be filed by December 21, 2007 or the case would be dismissed. Claimant did not file the complaint by the deadline. Claimant was discharged for willful misconduct. He appealed the denial of his application for UC benefits to the Referee and the UCBR, both of which affirmed the denial. Claimant then sought review by the Commonwealth Court. The UCBR filed a motion to strike claimant's petition for review because claimant failed to preserve any issues for the Court's review. The Court agreed. A petition for review requires a general statement of the objections to the order in question, not merely a restatement of the Court's standard of review. Claimant's petition did not mention any issue regarding willful misconduct, nor did he challenge any specific factual findings made by the tribunal below. As such, the issues were waived. The UCBR's motion to strike the petition for review was granted.

Karen E. Dopson v. Unemployment Compensation Board of Review, No. 1129 C.D. 2009, Filed November 13, 2009 ♦ Claimant requested FMLA leave to care for her grandchildren so that her son could stay in South Carolina to complete his student teaching and her daughter-in-law could study to take her medical board tests. When the request was denied, claimant voluntarily resigned her employment. Claimant then applied for unemployment compensation benefits on the basis that she had necessitous and compelling reasons to quit. The referee disagreed, finding that claimant made a personal choice to provide her family with childcare. The UCBR agreed, as did the Commonwealth Court. While in certain situations leaving work to provide childcare constitutes a necessitous and compelling reason, that was not the case here. Childcare was required here only because the parents of the children had chosen other activities. As a grandmother, claimant acted reasonably and in the best interest of her grandchildren, she was not compelled to quit her job.

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ATTENTION READERS, the editors of Thomson, Rhodes & Cowie Pennsylvania Unemployment Compensation Newsletter invite you to submit questions you may have dealing with unemployment compensation issues. The editors will compile questions received and periodically provide answers to recurrent issues. Submission of a question is no guarantee that an answer will be provided, but we will make every effort to answer as many questions as possible. Of course, for specific legal advice the reader should seek counsel from a qualified unemployment compensation attorney.

Send questions to: Margaret M. Hock, Esquire, Thomson, Rhodes & Cowie, P.C., 1010 Two Chatham Center, Pittsburgh, PA 15219.

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Copies are available on our web site at <http://www.trc-law.com> or upon request. Please direct inquiries to Margaret M. Hock, Esquire, Thomson, Rhodes & Cowie, P.C., 1010 Two Chatham Center, Pittsburgh, Pennsylvania 15219, (412) 232-3400.