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Pennsylvania Unemployment Compensation Newsletter

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A look at Act 6 of 2011…..

Act 6 of 2011 was signed into law on June 17, 2011, making significant changes to Pennsylvania's Unemployment Compensation Law. Act 6 sought to stabilize Pennsylvania's UC Trust Fund, control costs, and prevent claimant abuse by increasing eligibility requirements and generally revising computation of benefits. While making a number of changes specifically relevant to employers, Act 6 created an offset of UC benefits for certain severance payments, established a new voluntary Job Sharing Program, expanded employer relief from charges, and made changes reducing benefit terms and amounts.

For severance pay agreements made on or after January 1, 2012, an employer may now be able to use severance pay as an offset against a claimant's UC benefits. Severance payments, in excess of 40% of the average annual wage as of June 30 of the preceding year, will be offset against the employee's weekly benefit rate. For 2014, 40% of the average annual wage is estimated at $18,981.

Under Act 6 "severance pay" includes any payments made by an employer to an employee on account of a separation from the service of the employer, excluding payments for pension, retirement, accrued leave or payments of supplemental unemployment benefits. The deductible portion of a claimant's severance pay is allocated to the weeks immediately following the claimant's separation based on the claimant's full-time weekly wage. Moreover, if the offset is greater than the claimant's UC rate, the claimant will be ineligible for UC benefits. Under Act 6, the portion of "severance pay" that is used to offset unemployment benefits is attributed as follows:

> (A) Severance pay is attributed to the day, days, week or weeks immediately following the employee's separation.
>
> (B) The number of days or weeks to which severance pay is attributed is determined by dividing the total amount of severance pay by the regular full-time daily or weekly wage of the claimant.
>
> (C) The amount of severance pay attributed to each day or week equals the regular full-time daily or weekly wage of the claimant.
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> (D) When the attribution of severance pay is made on the basis of the number of days, the pay shall be attributed to the customary working days in the calendar week.

This effectively decreases the amount of a former employee's unemployment compensation benefits paid closest to the date of his separation.

It is important to be cognizant of this change, not only for purposes of correctly calculating a claimant's UC benefits, but also in negotiating severance pay. As the law prior to 2011 did not reduce UC benefits due to severance pay, claimants may now seek to negotiate higher severance pay in order to offset the effect of the reduced UC benefits.

In addition to the changes regarding treatment of severance payments, Act 6 also has provisions intended to avoid potential layoffs. An employer facing a temporary layoff of at least 10% of its employees in a designated unit may apply for approval of a Shared-Work Plan, through the voluntary Shared-Work Program. Once the Plan is approved, the employer is then permitted to reduce the hours of all employees in the designated unit by an approved percentage of between 20% and 40%. The affected employees then receive a percentage of their weekly UC benefits equal to the percentage by which their

hours of work are reduced. An employer interested in applying for a Shared-Work Plan should contact the Office of UC Benefits Shared-Work Program at 877-785-1531.

It is important to note, though, that a Shared-Work Plan may only last 52 consecutive weeks and designated employees cannot be laid off while the employer is participating in the plan. Moreover, an employer may only utilize Shared-Work Programs a maximum of 104 weeks out of a 156-week period. The employer implementing a Shared-Work Plan will be charged 100% of the UC paid to participating employees within the effective period of the plan.

Act 6 also expanded employer relief from charges, crediting employer accounts in qualifying situations. These situations include:

- Unemployment due to discharge for willful misconduct, leaving work without good cause, or other disqualifying terminations,
- Unemployment due to natural disasters declared by the President;
- Unemployment due to cessation of business for 18 months or less due to a disaster; and,
- If a claimant, after separation, is engaged in part-time work by a base year employer, the part-time employer will be relieved from charges for benefits payable while the part-time work is ongoing.

Should a qualifying separation occur, the employer should make sure to file a request for relief from charges within 15 days of receiving notice that the claimant has filed an application for benefits. Moreover, should a claimant return to work for an employer receiving relief from charges due to the claimant's qualifying separation, the employer must notify the Department within 15 days.

Beginning in 2012, Act 6 also reduces the maximum term of benefits from 99 weeks to 86 weeks. Act 6 also set the 2012 maximum weekly benefit amount at $573 with increases of 1% to 1.5% each year for the period of 2013 to 2018. Further, the statewide average maximum benefit amount and the statewide average annual wage are now calculated on a 36 month average. Finally, a claimant whose weekly benefit rate would be less than $70 no longer qualifies for benefits

APPELLATE CASE LAW REVIEW

INABILITY OR INCAPACITY TO MEET EMPLOYER'S STANDARDS ≠ WILLFUL MISCONDUCT

Where an employer bases a claim of willful misconduct on the claimant's violation of a work rule, the employer must prove: (1) the existence of the work rule, (2) the reasonableness of the rule, (3) the claimant's awareness of the rule, and (4) the claimant's violation of the rule. The burden then shifts to the claimant to prove that he or she had good cause for his or her actions. In the case of *Bell Socialization Services, Inc. v. UCBR, No. 414 C.D. 2013, Filed August 29, 2013*, the claimant worked as a residential service provider. Her employer required that she have reliable transportation as a condition of her employment. When hired, claimant had a vehicle, but it eventually failed mechanically. Claimant could not afford to fix the car or to purchase a new one. Consequently, she was fired. The Commonwealth Court found that, despite claimant's violation of her employer's reasonable work rule, she was incapable of adhering to the rule and was thus entitled to unemployment compensation benefits upon her termination.

ACCEPTING A JOB CREATES PRESUMPTION THAT THE JOB IS SUITABLE

When an individual accepts a position with an employer, a presumption arises that the position was deemed "suitable" by that individual. The presumption can, however, be overcome. For instance, in the case of *Karwowski v. UCBR, 2301 C.D. 2012, Filed September 12, 2013,* the claimant accepted a position 120 miles away from his residence after being out of work for over a year. After taking the job, he experienced significant health problems as a result of the laborious commute. He informed the employer of his issues, speaking to his direct supervisor and the human resources department. He tried to revise his work schedule, looked into transferring to a branch office, researched car pooling and searched for affordable apartments. When these efforts failed, he quit. The Unemployment Compensation Board of Review determined that claimant was ineligible for benefits under §402(b) of the Unemployment Compensation Law because he voluntarily quit his employment without cause of a necessitous and compel-

ling reason. The Commonwealth Court reversed that decision, noting that the claimant proved the employment to be unsuitable, despite the fact that he was aware of the long commute when he accepted the position. The Court stated that, although claimant knew that the commute would be difficult, he could not foresee that significant health complications would arise. The Court refused to deny him benefits because doing so would only penalize him for making a reasonable effort in good faith to seek out and maintain new employment.

EUC ACT OF 2008 REVISITED

Section 4001(d)(1) of the EUC Act of 2008 provides: "*the amount of emergency unemployment compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation...payable to such individual during such individual's benefit year under the State Law…*" Section 4001(d)(2) provides: "*the terms and conditions of State Law which apply to claims for regular compensation, and to the payment thereof, shall apply to claims for emergency unemployment compensation and the payment thereof.…*" For a discussion of the interplay between the EUC Act of 2008 and the Pennsylvania Unemployment Compensation Law, as well as a definition of "benefit year," please see the Commonwealth Court's decision in the case of *Sweeney v. UCBR, No. 12 C.D. 2013, Filed September 5, 2013.*

"REMOTENESS DOCTRINE" REVISITED

In addition to numerous other issues, the Commonwealth Court addressed in detail the remoteness doctrine in the case of *Henderson v. UCBR, No. 1332 C.D. 2012, Filed October 8, 2013.* The Court explained that the doctrine provides that an incident of willful misconduct cannot be so temporally remote from the ultimate dismissal and still be the basis for a denial of UC benefits. For example, where a claimant is found sleeping on the job but is not discharged until 25 days later, the employer is deemed to have condoned the behavior. The remoteness doctrine prevents an employer from seeking a denial of benefits based on willful misconduct only when there is an "unexplained substantial delay" between the claimant's misconduct and the employer's discharge of the claimant. If an employer establishes on the record that there is an explanation for the delay and the employer does not condone the claimant's conduct, then the remoteness doctrine does not apply. An explanation for the delay may include a description of the lengthy nature of the employer's investigation and administrative review process. In *Henderson*, employer's administrative process for investigating misconduct included investigating all the relevant documents and facts and holding a fact-finding conference. Ten to fifteen parties were interviewed prior to the fact-finding conference. After the conference, employer monitored claimant's conduct to ensure claimant did not engage in other misconduct while the investigation proceeded. Despite the fact that several months passed between the misconduct and the discharge, employer offered a sufficient explanation for the delay such that the remoteness doctrine did not apply.

SELF-EMPLOYMENT ASSISTANCE PROGRAM

The Self-Employment Assistance Program Act (SEA Act), which became effective in 1997 but which is no longer active, authorized a training program that provided payment of weekly SEA allowances, in the same amount and duration as regular unemployment compensation benefits, to claimants who participated in SEA activities and were actively engaged on a full -time basis in efforts to establish a business and become self-employed. For a discussion concerning the interplay between the SEA Act, the Pennsylvania Unemployment Compensation Law and the Emergency Unemployment Compensation Act of 2008, please see the Commonwealth Court's decision in the case of *Frimet v. UCBR, No. 246 C.D. 2013, Filed October 4, 2013.*

BASES FOR REQUEST FOR RECONSIDERATION

The UCBR's regulations provide that reconsideration of a decision will be granted "only for good cause in the interest of justice without prejudice to any party." 34 Pa.Code §101.111(b). In determining whether "good cause" exists, the UCBR must consider whether the party requesting reconsideration has presented new evidence or changed circumstances or whether the UCBR failed to consider relevant law. The UCBR has discretion to grant reconsideration, but there must appear of record some reason to support this exercise of discretion. A party seeking to merely reargue its case before the UCBR, without alleging a change of circumstance, producing new evidence that was not available at the time of the hearing, or articulating a legal theory that the

UCBR failed to consider in its initial decision, has not presented "good cause" for granting reconsideration. A discussion of this issue may be found in the case of *Laster v. UCBR, No. 151 C.D. 2013, Filed November 26, 2013.*

INELIGIBILITY UNDER §3 OR §402(e) OF THE LAW?

A question often arises as to whether a claimant's eligibility for benefits should be determined under §3 or §402(e) of the Law. These sections are not parallel legal theories. Section 402(e) is used to disqualify claimants for *work-related* misconduct, whereas §3 is used to disqualify claimants for *non-work-related* misconduct which is inconsistent with acceptable standards of behavior and which directly affects the claimant's ability to perform his assigned duties. Under §402(e), the employer bears the burden of proving that the claimant's unemployment is due to the claimant's willful misconduct. Under §3, the employer must prove (1) that the claimant's conduct was contrary to acceptable standards of behavior and (2) that the claimant's unacceptable conduct directly affects or reflects upon the claimant's ability to perform his assigned duties. A discussion of the application of each section of the law may be found in the Commonwealth Court's decision of *Palladino v. UCBR, No. 471 C.D. 2013, Filed December 19, 2013.*

RECOUPMENT OF OVERPAYMENT OF BENEFITS

The Commonwealth Court addressed the procedures to determine if a non-fraud overpayment of unemployment compensation benefits may be recouped in the case of *Gnipp v. UCBR, No. 1985 C.D. 2012, Filed December 20, 2013.* The Court explained that Pennsylvania's Unemployment Compensation Law expressly allows the Department of Labor & Industry to decide whether an overpayment of regular unemployment compensation benefits is non-fault and, thus, beyond recoupment. The federal EUC Act of 2008 is worded differently and requires a claimant to repay an overpayment unless he obtains a waiver or successfully appeals. There is a two-step process with respect to recoupment of overpayments made under the EUC Act of 2008. First, if a claimant is found ineligible for EUC benefits he has received, then an overpayment is imposed. Second, a determination is made whether the overpayment was with or without fault, and whether repayment will be "contrary to equity and good conscience."

DOES HOUSE ARREST = INCARCERATION?

The Commonwealth Court said "no" in a case of first impression, *Chamberlain v. UCBR, No. 604 C.D. 2013, Filed January 3, 2014*, at least insofar as §402.6 of the UC Law is concerned. Section 402.6 of the Law states:

> *Ineligibility of Incarcerated Employe - An employe shall not be eligible for payment of unemployment compensation benefits for any weeks of unemployment during which the employe is incarcerated after conviction.*

The Law does not, however, define "incarceration." Noting the principle that the UC law was intended to be remedial in nature and liberally construed, and noting the Supreme Court's holdings that "home release to electronic monitoring does not constitute custody," the Court held that house arrest is not "incarceration" that renders a claimant ineligible for unemployment compensation under §402.6 of the Law. The Court stated: "To be clear, we do not hold that an individual sentenced to house arrest is eligible for unemployment compensation benefits as a matter of law. Rather, we hold that house arrest is not "incarceration" that renders a claimant ineligible…" A claimant under house arrest must still meet the requirements for eligibility under the UC Law.

REASONABLE FORCE USED IN SELF-DEFENSE DOES NOT CONSTITUTE WILLFUL MISCONDUCT

In the case of *Miller v. UCBR, NO. 1037 C.D. 2013, Filed January 9, 2014,* the claimant, an electrician for PepBoys, needed to install a radio in a customer's vehicle. He drove the vehicle to the first available bay where another employee, who was not working at the time, told Miller, "This is my bay. You need to go somewhere else." Miller explained that he needed to install the radio and would be done in 30 minutes. The other employee said, "That's too bad," and slammed down the bay door, locking it. Miller attempted to unlock the door, but the other employee pushed Miller's hands off the chain. The two argued. Miller said, "We don't need to fight now. I have a customer waiting." The other employee grabbed Miller by the shirt, shoving him and stating, "You want to live?" Miller shoved the other employee back. Both were discharged for fighting in the workplace. The Court stated that when Miller's shirt was grabbed, this was nothing short of an assault, an indication that bodily harm was imminent. Thus, reasonable force in self-defense was justifiable. Where an employee's conduct is justifiable, it

cannot be considered willful misconduct because it is not a willful disregard of standards of behavior that an employer has a right to expect.

"FAULT" OVERPAYMENT DEFINED

In the case of *Castello v. UCBR, No. 163 C.D. 2013, Filed December 9, 2013, Reported February 6, 2014,* the Commonwealth Court defined a "fault" overpayment. Mr. Castello reported $0 in earnings for the weeks of 09/24/2011 through 10/29/2011. Consequently, he received UC benefits totaling $3,384. However, he was also paid wages during that same time period totaling $10,940.55. The UC Service Center imposed a fault overpayment based on his failure to make a valid claim. Castello appealed, but both he and employer failed to appear before the referee. The referee affirmed the UC Service Center's determination based on the claim file, which was admitted into evidence. Castello appealed to the UCBR, which again affirmed. On appeal to the Commonwealth Court, Costello argued that, because no one appeared at the referee's hearing, there was no evidence that he intentionally failed to report the wages he received. The Court was not persuaded, noting the claim record with $0 reported income and the referee's determination that "only if the claimant states that he has not worked for those weeks will the system report $0 in earnings" constitutes sufficient evidence to support a finding that Castello intentionally failed to report his earnings. The Court stated:

> Section 804(a) of the Law provides that if a person receives unemployment compensation benefits by reason of his fault, he will be responsible for repaying the amount received in error plus interest. The word "fault" within the meaning of §804(a) of the Law connotes an act to which blame, censure, impropriety, shortcoming or culpability attaches. Conduct that is designed to improperly and intentionally mislead the unemployment compensation authorities is sufficient to establish a fault overpayment. For example, an intentional misstatement on an application for benefits can support a finding of fault under §804(a). (*citations omitted*)

VOLUNTARY QUIT vs. CONSTRUCTIVE DISCHARGE

On July 12, 2012, Michael Stugart was sent home by his employer after blaming his production problems on his theory that U.S. Government Officials were using neuron satellite monitoring to remote control his thinking and actions at work, as well as his opinion that the office staff was being tortured by the government. The employer advised Stugart that it was his choice to return to work the following day but that his "theories" would not be tolerated. Stugart did not return to work. Instead, he filed for unemployment compensation benefits, which were denied. Stugart appealed to the Commonwealth Court, arguing that he was discharged and, because employer failed to appear before the Referee to offer evidence of willful misconduct, benefits should have been awarded. The Court was not persuaded. Whether a claimant's separation from employment is the result of a voluntary action or a discharge is a question of law and must be determined from a totality of the facts surrounding the cessation of employment. Specifically, the issue is whether the language employed by the employer possesses the immediacy and finality of a firing. Stugart argued that the ultimatum given him by the employer required him to do the impossible, i.e., not talk about government torture and mind control at work. Nevertheless, the Court stated that where, as here, an employee is given a choice to remain at work or to leave, there is not sufficient finality and immediacy to establish a constructive discharge. For a complete reading of the Court's opinion, see *Michael Stugart v. UCBR, No. 2386 C.D. 2012, Filed February 19, 2014.*

SELF-EMPLOYMENT DEFINED

In the case of *Staffmore, LLC v. UCBR, No. 617 C.D. 2013, Filed March 5, 2014,* the Commonwealth Court defined "self-employment" for purposes of the Unemployment Compensation Law. Jesse Frasch worked for a staffing agency which provided workers to client agencies to assist in the care of special needs patients. Frasch was free to accept or reject cases and signed an independent contractor agreement. He worked for a single client agency, which supervised his work and determined his hours. At the same time, Frasch worked for other entitles as a teacher. When the client agency ended its relationship with the staffing agency, Frasch informed the staffing agency that he would not be accepting any additional cases because he was expecting to teach in the fall. He then filed for UC benefits. Recognizing that a claimant is ineligible for benefits for any week in which he is self-employed, the Commonwealth Court identified an individual as "self-employed" if that individual performed services for wages where (a) such individual has been and will continue to be free from control or direction over the performance

of such services both under his contract of service and in fact, and (b) as to such services, said individual is customarily engaged in an independently established trade, occupation, profession or business. Reviewing the facts of this case, Frasch was not found to be self-employed.

"GOOD CAUSE" TO ENGAGE IN WILLFUL MISCONDUCT??

After Michelle Matthews was discharged on October 13, 2012 as a manager from Michelle Matthews Day Spa (a business she founded and owned through May 2011), she filed for UC benefits. The UCBR found that employer discharged Matthews for paying employees' wages and not reporting those figures to the governing authorities, keeping "not real" and "real" books, underpaying payroll taxes to the state and federal authorities, consistently arriving to work late, refusing to use business accounting software, and failing to pay vendors—all without good cause. On appeal to the Commonwealth Court, Matthews argued that the UCBR erred in failing to find that she had good cause for her actions. She contended that employer knew of her bookkeeping practice and directed her in this regard. She further contended that the UCBR improperly based its decision on its observation that employer had a right to assume that she would conduct the business in accordance with the law, inasmuch as she only did what employer ordered her to do. The Court disagreed. The Court stated that her employer had a right to assume that she would conduct its business in accordance with the law; however, her actions showed a willful disregard for employer's interests and a disregard for standards of behavior that the employer rightfully could have expected of her. Thus, Matthews' actions constituted willful misconduct. Regarding her argument that the UCBR erred in failing to conclude that she had good cause for her actions, the Court said that once employer establishes willful misconduct, the burden then shifts to claimant to establish good cause, which may be accomplished by showing that her actions were justifiable and reasonable under the circumstances. Here, Matthews could not do so.

ACT 534 BENEFITS NOT COMPENSATION FOR PURPOSES OF ESTABLISHING WORK-RELATED INJURY FOR PURPOSES OF ESTABLISHING ALTERNATE BASE YEAR

The PA Department of Welfare employed Ryan Brown as a full-time youth development aide from September 2008 through January 20, 2010. He worked at the Youth Development Center with violent criminal offenders. On January 20, 2010, he sustained a work-related injury while restraining a resident. His injury was deemed to be compensable under the Workers' Compensation Act. His workers' compensation benefits were, however, suspended/terminated effective July 19, 2010. Thereafter, Brown filed an application for UC benefits with an effective date of October 7, 2012, thus establishing a base year of July 30, 2011 through June 30, 2012. Because he had insufficient wages during his base year to qualify for UC benefits, he requested, pursuant to §204(b) of the Workers' Compensation Act, an alternate base year of the four quarters immediately prior to his January 20, 2010 work-related injury. On January 18, 2013, the UC Service Center determined that Brown's financial ineligibility due to a lack of sufficient wages during the base year was not due to a compensable injury and, thus, he could not elect an alternate base year. His WC benefits had been suspended/terminated on July 19, 2010. Brown appealed the Service Center's determination. Before the Referee, Brown introduced into evidence pay statements for July 22, 2011 and August 5, 2011, which identified his compensation as "Act 534/632 Dis Sal Comp." The Referee affirmed the Service Center's determination, finding that there was no evidence to establish that he continued to receive WC benefits during his base year. Because Brown did not establish that his compensable injury affected his base year for UC benefits, he could not use an alternate base year to determine his eligibility for UC benefits. The UCBR affirmed. In affirming the UCBR's order, the Commonwealth Court stated that Brown's benefits received under Act 534 were not determinative of whether his injury was compensable under the WC Act. Brown's receipt of Act 534 benefits during his base year was not proof that his inability to meet the monetary and credit week requirements under §401(a) of the UC Law was due to a work-related injury, compensable under the WC Act. Therefore, the Court said that Brown failed to meet his burden to demonstrate financial eligibility. For the full opinion of the Court, see *Ryan R. Brown v. UCBR, No. 838 C.D. 2013, Filed March 19, 2014.*

EVEN A MINOR RULE VIOLATION MAY CONSTITUTE WILLFUL MISCONDUCT

In the case of *Christopher Johns v. Unemployment Compensation Board of Review, No. 1339 C.D. 2013, Filed March 21, 2014*, Johns was denied UC benefits under Section 402(e) of the Unemployment Compensation Law relating to willful misconduct.

In his appeal to the Commonwealth Court, he asserted that the UCBR erred in determining that he threatened a co-worker, without considering the conditional nature of his phrasing, and in finding that he made a threat in the first instance. The Court disagreed. Johns had been working for the medical center of UPMC as a customer service representative for more than five years. Because he suffers from an emotional disability, employer engaged Work Partners to serve as his advocate. Shortly before his termination, Johns contacted Work Partners about going on short-term disability while he changed medication; however, when he could not reach his advocate at Work Partners, he became visibly upset. After co-workers alerted Johns' supervisor that he appeared to be agitated, the supervisor had a conversation with him in an empty office away from the customer service floor, which no one witnessed. During this closed-door meeting, Johns made a threat against his Work Partners advocate. The UCBR found that Johns had committed willful misconduct in that he threatened to hurt another person in violation of employer's policy. It was irrelevant that he communicated it to a third party. Before the Commonwealth Court, Johns argued that there was insufficient evidence of willful misconduct, and, in the alternative, even if there was evidence that he made a statement about hurting his advocate, such a statement was *de minimis*. The Court defined willful misconduct as: (1) wanton and willful disregard of an employer's interests; (2) deliberate violation of rules; (3) disregard of the standards of behavior which an employer rightfully can expect from an employee; or (4) negligence showing an intentional disregard of the employer's interests or the employee's duties and obligations. Here, willful misconduct was based on a violation of a work rule, i.e., a threat against a co-worker. Next, in determining whether Johns made a true threat, the Court applied a totality of the circumstance test. First, it assessed the communication itself, which it deemed to be an intent to commit harm. Second, it considered the surrounding circumstances of the statement, which included Johns' demeanor and the effect of his statement on the hearer and others. The Court noted that the statement was made in the workplace which created a disturbance that alarmed Johns' co-workers; Johns appeared to be very frustrated and upset, which made his supervisor upset; and Johns was neither provoked nor made the statement in a jocular manner. Thus, the Court concluded that the statement did amount to a true threat and, therefore, Johns violated employer's policy. Regarding the *de minimis* argument, it does not apply to cases involving a rule violation. Also, there was no indication that Johns' threat was made or accepted as a joke. The fact that Johns' threat was made to a third party is not dispositive. Moreover, there was no justifiable provocation that prompted Johns' threat.

FAILED BUSINESS VENTURE ≠ ELIGIBILITY FOR UC BENEFITS

Barry Leace established and was president of a company ("Company"), which provided products and services to a single, large retail store. After Company lost its contract with its only customer, Leace filed for UC benefits. The local Service Center determined that Claimant was ineligible under §402(h) of the Law, finding that Leace owned 50% of Company and had a substantial amount of control of the business. Leace appealed. He testified that Company acted as a conduit between a trading company and a retail store. He further testified that while he owned 50% of Company, the trading company maintained control over all decisions related to its products. The trading company further required that Company not sell competitors' products. Despite his testimony, the Referee affirmed the Service Center's determination. The UCBR affirmed. Leace appealed to the Commonwealth Court, which noted that §402(h) of the Law states that self-employed individuals are ineligible for unemployment compensation benefits. The Courts have defined "self-employment" as services performed by an individual for wages where: (a) such individual has been and will continue to be free from control or direction over the performance of such services both under his contract of service and in fact; and (b) as to such services, the individual is customarily engaged in an independently established trade, occupation, profession or business. In other words, the test for self-employment is whether the claimant had a substantial degree of control over both the management and policies of the corporation. The Court explained that, "The [Law] was not enacted to compensate individuals who fail in their business ventures and become unemployed businessmen." Given the facts of this case, the Court affirmed the denial of benefits. The Court held that Leace, as the president of Company, had substantial control over the policy and management decisions of the corporation for over ten years. The trading company did not prevent Company from acquiring other clients, nor did the trading company pay for any of Company's business expenses. For a complete review of the Court's analysis, see *Barry M. Leace v. UCBR, No. 1945 C.D. 2013, Filed June 6, 2014.*

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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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