



# Pennsylvania Unemployment Compensation Newsletter

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BUREAU OF UC BENEFITS & ALLOWANCES  
LABOR & INDUSTRY BUILDING  
SEVENTH & FORSTER STREETS  
HARRISBURG, PA 17120

www.state.pa.us, PA Keyword: unemployment

## EMPLOYER INFORMATION

If you wish to apply for Unemployment Compensation benefits, it is very important that you provide accurate information about our company. Therefore, please provide the employer information exactly as shown below when filing your application for UC benefits.

Name of Employer	
Mailing Address	
Telephone Number	
Fax Number	
E-mail Address	
Contact Person	
Contact Person Title	
PA UC Account Number	

If you want to file an application for UC benefits, you may do so in one of the following three ways:

- 1) **Internet** – The fastest and most convenient method is to file using the online application at [www.state.pa.us](http://www.state.pa.us), PA Keyword: unemployment.
- 2) **Telephone** – Call the UC Service Center at 1-888-313-7284 from 7 a.m. to 4:45 p.m. weekdays. (TTY access for the Deaf and Hard of Hearing is available at 1-888-334-4046).
- 3) **Download** – Download and print an application at [www.state.pa.us](http://www.state.pa.us), PA Keyword: unemployment.

Please Note: This form does not guarantee your eligibility for UC benefits. After you file your application for UC benefits, a determination of your eligibility will be made by the Department of Labor & Industry.

The Pennsylvania CareerLink staff would like to help make your job search successful. To find a list of PA CareerLink offices located near you, or to search current job openings, visit [www.pacareerlink.state.pa.us](http://www.pacareerlink.state.pa.us). All PA CareerLink services are provided to you at no cost.

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

UC-1609P 3-06

## MONEY SAVING FORM!

Form UC-1609P, which is available on the Department of Labor & Industry's website, provides former employees with information to be used when filing unemployment compensation claims. Incorrect information on the claim form can lead to an incorrect financial determination, which could increase your organization's tax rate.

Use of this form may save you time and money by reducing inaccurate claims resulting in inaccurate charges to your account—charges that you will need to spend time and effort to have removed.

We strongly suggest that the form be completed and provided to every individual who leaves your employ—for whatever reason. Do not be afraid that doing so will invite improper claims. Not doing so may cost you significant time and money.



## DECISIONS OF NOTE...

*Architectural Testing, Inc. v. Unemployment Compensation Board of Review, No. 2250 C.D. 2006, Filed January 24, 2008.* Employer received complaints from employees and customers alleging that

Claimant was under the influence of alcohol. Employer maintained a substance abuse policy which provided that a drug and alcohol screening could be requested from any employee who demonstrated cause for concern. Employer asked Claimant to submit to a drug screen test. Claimant refused because he believed he was being harassed. Claimant was then terminated. The Referee upheld the denial of benefits to Claimant under §402(e.1) of the Unemployment Compensation Law, which states that a claimant will not be eligible for benefits if he is unemployed "due to failure to submit and/or pass a

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drug test conducted pursuant to an employer's established substance abuse policy[.]” The Unemployment Compensation Board of Review (UCBR) reversed and granted benefits to Claimant because employer's substance abuse policy did not provide that disciplinary action would result from a refusal to take a drug test. Employer appealed, and the Commonwealth Court concluded that under the plain meaning of § 402(e.1), an employer's established substance abuse policy need only set forth when an employee may be required to submit to a drug test; it does not require that the consequences for refusal of a drug test be set forth. The Court reiterated that § 402(e.1) mandates that discharges relating to failure of a drug test are no longer analyzed as willful misconduct cases. Accordingly, the Court held that in order for a claimant to be rendered ineligible for benefits under § 402(e.1), the employer need only have an established substance abuse policy which permits it to conduct drug tests. The policy need not explicitly state that an employee may be discharged for refusal to submit to such a test. The UCBR's decision was reversed and benefits were denied.

*On Line Inc. d/b/a Sunrise Sonoco v. Unemployment Compensation Board of Review, No. 1366 C.D. 2007, Filed February 1, 2008.* Claimant, an assistant manager at a service plaza on the Pennsylvania Turnpike, was required to submit daily transaction reports to employer. Claimant's last day of employment was January 31, 2007, when the service plaza closed. After closing, employer became aware of an inventory shortage and a number of questionable refunds that had been made in January 2007. Claimant applied for benefits on February 5, 2007; however, employer responded that Claimant was discharged for willful misconduct because she failed to keep inventory and failed to follow cash handling procedures. Claimant was granted benefits and employer appealed. Both the Referee and UCBR affirmed. On appeal, the Commonwealth Court affirmed the grant of benefits, observing that the uncontradicted evidence was that Claimant thought the refunds were being accounted for appropriately. Further, neither party could explain the inventory shortages. The Court concluded that employer sought to make Claimant liable for misconduct of others simply because she held the title of assistant manager. Accordingly, willful misconduct by Claimant was not established.

*Donald C. Walsh v. Unemployment Compensation Board of Review, No. 1492 C.D. 2007, Filed February 20, 2008.* Claimant, a driver's license manager employed by the Department of Transportation, was

suspended on March 27, 2007 and discharged on May 8, 2007 for violating employer's Record Information Confidentiality policy. The policy prohibits unauthorized access, use, or disclosure of confidential and personal information maintained in driver license and vehicle registration records. Claimant's application for benefits was denied. On appeal, the Referee determined that Claimant, on two separate occasions, accessed driver and vehicle records of an individual who was romantically involved with Claimant's estranged wife. For personal reasons, Claimant printed the records and took them home. The Referee received evidence that other employees had also violated employer's policy but were not discharged. Claimant was not similarly situated to those individuals, however, because they had accessed records for individuals with their consent. Hence, the Referee affirmed the denial of benefits. The UCBR affirmed. Claimant appealed the UCBR's decision, arguing that he was not guilty of willful misconduct because the decision was not supported by substantial evidence. The Court was not persuaded. Claimant's discharge was based on competent evidence. Claimant did not offer good cause for his actions. The denial of benefits was affirmed.

*Department of Corrections, SCI-Camp Hill v. Unemployment Compensation Board of Review, No. 1205 C.D. 2006, Filed March 6, 2008.* Claimant, a corrections officer, heard rumors that his colleagues enlisted four inmates to assault another inmate. Claimant did not report the rumors and, thereafter, the targeted inmate was attacked. Upon investigation by employer, Claimant confessed to knowing of the planned attack and failing to report it. Consequently, Claimant was suspended without pay. Claimant's benefits were initially denied because he committed willful misconduct by violating employer's code of ethics, which addressed safety of inmates and the corrections officer's duty not to tolerate brutal or discriminatory treatment of inmates. The UCBR reversed, finding that while employer met its burden of proving willful misconduct, Claimant had good cause for violating employer's rule because he reasonably feared retaliation from his coworkers. Employer appealed to the Commonwealth Court, which reversed the UCBR's decision. The Court expressed outrage that Claimant, whose job was to protect inmates, did nothing to stop the planned attack. The Court noted that corrections officers bear greater responsibility and must adhere to higher standards of conduct than those in other professions. Claimant appealed to the Supreme Court, which remanded the case to the Commonwealth Court in light of two recent Supreme Court

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decisions that rejected any imposition of a heightened standard for willful misconduct based on the nature of the employment involved. On remand from the Supreme Court, the Commonwealth Court reasoned that Claimant's fear of retaliation caused him to disregard the very purpose for which he was hired – to protect inmates from mistreatment. Since employer's interest of protecting its inmates from harm outweighed Claimant's reasons for failing to do his job, i.e., fear of retaliation, Claimant was unable to affirmatively prove good cause for violating a known work rule. Thus, benefits were denied.

*Joan Procito v. Unemployment Compensation Board of Review, No. 2402 C.D. 2006, Filed March 17, 2008.* Claimant, a financial manager, voluntarily quit her job to follow her domestic partner to Florida. Claimant's domestic partner had moved to Florida to be near her son, who has a learning disability, and to seek a less stressful environment. The Referee denied benefits and ruled that Claimant had not shown a necessitous and compelling reason to voluntarily leave her position. On review, the UCBR affirmed and adopted the findings of the Referee. On appeal, Claimant raised several arguments, including constitutional challenges to the UCBR's construction of §402(b). The Commonwealth Court, however, affirmed the UCBR's decision and disregarded Claimant's constitutional questions. The Court reiterated that, in order to show a necessitous and compelling cause for leaving employment to follow a spouse, Claimant must demonstrate that the spouse elected to move for reasons beyond his or her control and the couple would face an economic hardship in maintaining two residences or the move would result in an insurmountable commuting problem. The Court noted that a personal preference is not "necessary or compelling." Claimant's partner's decision to move to Florida was made after she had separated from her former job and decided to seek a less stressful environment. Accordingly, the partner's decision was a matter of personal preference, which precluded a determination by the UCBR that Claimant had a necessitous and compelling cause to follow. Benefits were appropriately denied.

*Cathy Mancine v. Unemployment Compensation Board of Review, No. 2144 C.D. 2007, Filed April 15, 2008.* Claimant was discharged from her position as a Health Unit Coordinator at UPMC St. Margaret Hospital for violating its theft policy. Employer provided drink coupons for its patients and their families. Employer viewed Claimant's use of the coupons as theft because her receipt of free beverages at the employer's cafeteria resulted in the loss

of revenue to the employer. The UCBR affirmed the Referee's decision to deny benefits. On appeal, the Commonwealth Court considered whether Claimant's use of the coupons constituted a violation of employer's theft policy. To that end, the Court determined that the real issue was whether Claimant had legal entitlement to the coupons. The Court observed that the coupons did not contain any prohibition or limitation on their transferability and employer did not prove that it informed employees that they could not use the coupons or that it intended the coupons to be used only by patients or their families. Accordingly, the Court held that the UCBR's conclusion that Claimant engaged in willful misconduct was erroneous. Employer did not satisfy its burden of proving Claimant had no legal entitlement to use the coupons. The denial of benefits was reversed.

*C E Credits Online v. Unemployment Compensation Board of Review, No. 1269 C.D. 2007, Filed April 24, 2008.* C E Credits Online (CEC) offers a variety of educational courses on the internet. Students who enroll in CEC's courses post their work online for review by CEC's moderators, who determine if the students have answered the topic questions appropriately. CEC demanded that the moderator's responses and postings be free of errors in grammar and syntax. Claimant began moderating courses for CEC in 2004. She maintained a written agreement with CEC that provided that she was an independent contractor. Claimant stopped working as a moderator and applied for benefits. Benefits were granted. The UCBR affirmed. Because she was not free of CEC's direction and control over the quality of her work, the UCBR found she was CEC's employee. On appeal, the Commonwealth Court considered whether Claimant was an employee under the UC Law. The Court observed that claimant was free to refuse assignments, received no employee benefits or on-the-job training, taxes were not withheld from her pay, she supplied a computer to perform her moderating job, and she was not expected to attend any regular meetings. The Court added that claimant executed a written contract in which she agreed to accept the engagement as an independent contractor. Furthermore, as to CEC's control over claimant, the Court stated that "control" is not a matter of approving or directing the final work product as much as it is a matter of controlling the means of its accomplishment. The Court emphasized that claimant retained unfettered discretion over whether to accept work from CEC. Accordingly, when balancing the relevant factors, the Court concluded that claimant was an independent contractor, not an employee. The grant of benefits was reversed.

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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.