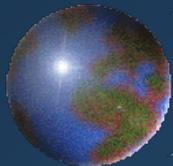


# **Alabama UC Bootcamp**

## **Alabama Unemployment Bootcamp for Employers – *Getting Fit to Win* – Part 1**



**Presented by: Alabama Cooperative Extension System  
Tommy Eden, Constangy, Brooks & Smith, LLP  
Rosemary Elebash, National Federation of Independent Business  
Joey Ammons, Alabama Department of Labor General Counsel**

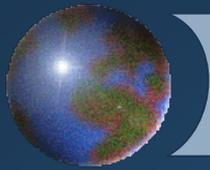


# Legal Disclaimer

- ✦ **This presentation is for educational purposes only and is not intended as a substitute for the legal advice of an attorney knowledgeable of the issues covered as they relate to a user's individual circumstances or a medical practitioner. The presenter makes no assurances regarding the accuracy or completeness of the following information. Legislative, regulatory, case law and medical developments regularly impact on general research and medical information.**



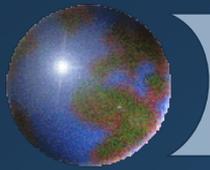
"No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers."



# ***Alabama UC Bootcamp***

## ***Why Participate in this Training?***

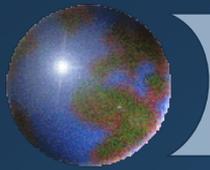
- ❖ Why should I care?
- ❖ How will this Training make my life better?
- ❖ What must I do?



# Alabama UC Bootcamp

## *Why Should I Care?*

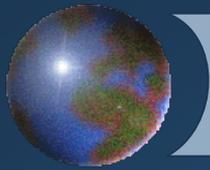
- ❖ Lost UC claims cost Alabama's Employer's \$\$\$\$ on their experience ratings
- ❖ UC taxes are a cost of doing business you can control
- ❖ Lose enough UC claims and you will be unemployed



# Alabama UC Bootcamp

## *How Will This Training Make My Life Better?*

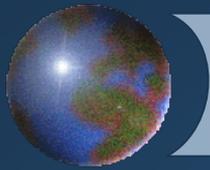
- ✚ Winning lowers employer experience ratings equals lower UC taxes
- ✚ Winning the UC hearing is evidence that you conducted a proper termination
- ✚ Potential greater savings in related employment litigation



# ***Alabama UC Bootcamp***

## ***What Must I Do?***

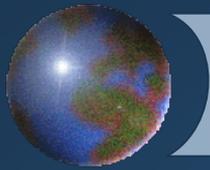
- ❖ Download this presentation
- ❖ Adopt policy, handbooks and forms to implement a winning UC strategy
- ❖ Train supervisors on what steps they can take to help win UC case



# Alabama UC Bootcamp

*In which disqualification box does your employee's UC Claim fit?*

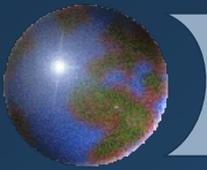




# Alabama UC Bootcamp

*In which disqualification box does your employee's UC Claim fit?*

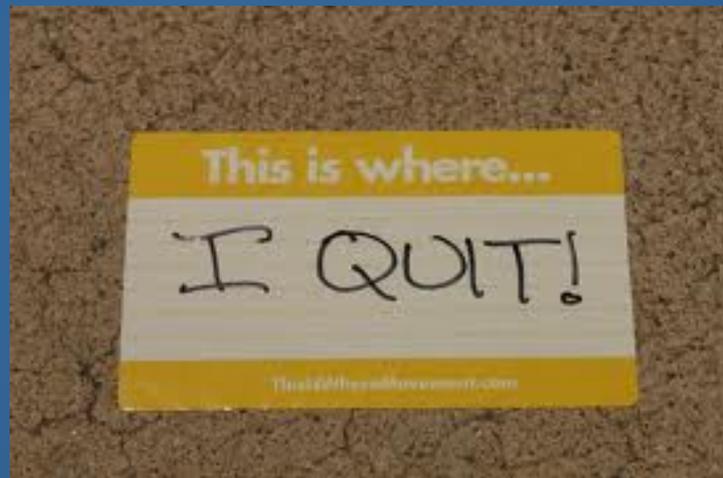
- ⊕ Voluntary quit
- ⊕ Act endangering safety of others
- ⊕ Use of illegal drugs after previous warning
- ⊕ Criminal act
- ⊕ Dishonest act
- ⊕ Actual or threatened misconduct connected with work- after repeated warning
- ⊕ Misconduct – no prior warning
- ⊕ License revocation

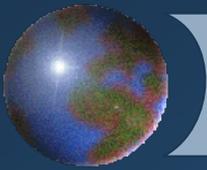


# Alabama UC Bootcamp

## Voluntary Quit - Ala. Code §25-4-78(2)

- ❖ An individual shall be disqualified from unemployment benefits if he/she has left their most recent bona fide work without good cause connected with such work
- ❖ Total Disqualification



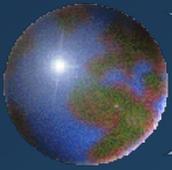


# Alabama UC Bootcamp

## Voluntary Quit - Ala. Code §25-4-78(2)

- Employer has burden to prove there was a voluntary quit. Once proven, the burden shifts to employee to prove they quit for a “good work-connected cause”.



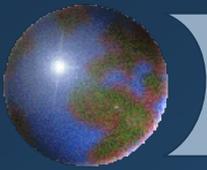


# Alabama UC Bootcamp

## Voluntary Quit - Ala. Code §25-4-78(2)

- ❖ “Good work-connected cause
- ❖ Examples??
- ❖ Risk reduction strategies??



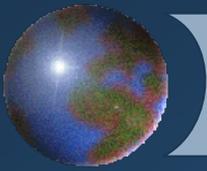


# Alabama UC Bootcamp

## Voluntary Quit - Ala. Code §25-4-78(2)

- Excellent “personal” reason for voluntarily leaving will never satisfy the conditions of §25-4-78(2) – no matter how well justified.
  - Child care, broken down car
- Fit Employers get resignations in writing



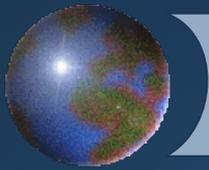


# Alabama UC Bootcamp

## Act Endangering Safety of Others - Ala. Code §25-4-78(3)(a)



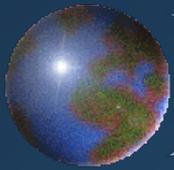
- ❖ Total Disqualification
- ❖ Fit Employers get it in writing by taking signed statements, photos, etc.



# Alabama UC Bootcamp

## Act Endangering Safety of Others - Ala. Code §25-4-78(3)(a)

- ✚ Fit Employers learn Do's and Don'ts under Alabama Guns in the Parking Lot Act and adopt workplace violence prevention policy, safety policy, etc.

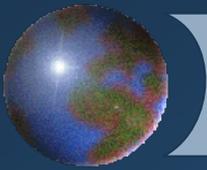


# Alabama UC Bootcamp

## Use of Illegal Drugs - Ala. Code §25-4-78(3)(a)

- ❖ Use of Illegal Drugs after Previous Warning, Refusal to Submit to or Cooperate with Blood or Urine Test
- ❖ Total Disqualification
- ❖ Fit Employers have an Alabama Drug Free Workplace Policy, Forms and have a report from MRO.

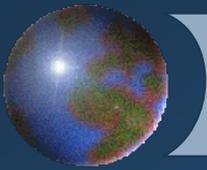




# Alabama UC Bootcamp

## Use of Illegal Drugs - Ala. Code §25-4-78(3)(a)

- ✦ Fit Employer has signed consent to be tested with “warning” of discharge consequences
- ✦ Fit Employer has employee sign acknowledgment of consequences of refusal form
- ✦ Fit Employer uniformly applies drug testing policy to all employees
- ✦ Fit Employer does not send collector 30 minutes prior to quitting time

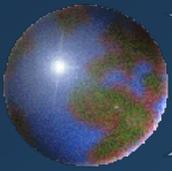


# Alabama UC Bootcamp

## Criminal Act - Ala. Code §25-4-78(3)(a)

- Total Disqualification
- Small amounts of theft – does it matter?
  - Anthony Williams – Amount is not relevant (\$3.51 for Potato Salad/Slaw)
  - Filing of Police Report – Is it necessary? (Not with ADOL, but some Circuit Judges)
- Fit Employers file a police report or at the very least takes signed statements





# Alabama UC Bootcamp

## Dishonest Act - Ala. Code §25-4-78(3)(a)

- “...characterized by lack of truth, honesty, probity or trustworthiness or by inclination to mislead, lie, cheat or defraud....”
- False statement in employment application?
- Forging a Doctor's Note?

**TIPTON COUNTY MEMORIAL HOSPITAL**  
 1000 SOUTH MAIN STREET • TIPTON, IN 46072 • 317/675-8500  
 DEA No. AT 2293948

For Parson, Ryan Rx # \_\_\_\_\_  
 Address \_\_\_\_\_ Date 18 Oct 94

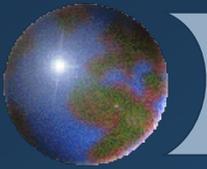
**Rx**

1	
2	
3	
PRN	
NR	
1YR	

Neck operation  
19 Oct 94. No work  
**Need a Doctor's Note?**

**www. \_\_\_\_\_ .com**

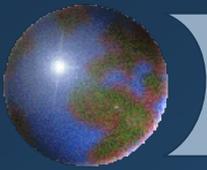
Dispense as written M.D. W. [unclear] M.D. May substitute  
 DEA No. 317-844-7004



# ***Alabama UC Bootcamp***

## **Dishonest Act - Ala. Code §25-4-78(3)(a)**

- ❖ Fit Employer have list of dischargeable offenses in Handbook or Rules that match Alabama UC disqualifications
- ❖ Fit Employers are not afraid to label conduct a dishonest act in their discharge documents
- ❖ Employee Defamation Immunity?

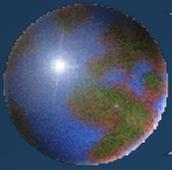


# Alabama UC Bootcamp

## Dishonest Act - Ala. Code §25-4-78(3)(a)



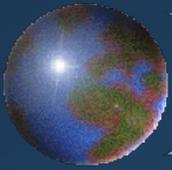
- ❖ Off-Duty Misconduct – Does it matter?
- ❖ What if a bank employee?
- ❖ Fit Employers have written job descriptions listing essential functions and essential qualifications



# Alabama UC Bootcamp

## Misconduct - Ala. Code §25-4-78(3)(b)

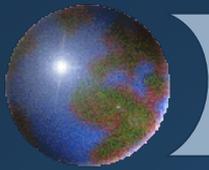
- ❖ Actual or Threatened Misconduct - Repeated after Previous Warning – *Total Disqualification*
- ❖ Burden is on Employer to Prove Misconduct
- ❖ Do prior warnings have to be for same misconduct?



# Alabama UC Bootcamp

## Misconduct - Ala. Code §25-4-78(3)(b)

- ❖ No Fault Policies?
- ❖ Fit Employers have prior written warning signed by employees and use broad Final Written Warning

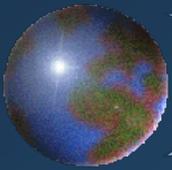


# Alabama UC Bootcamp

## Misconduct - Ala. Code §25-4-78(3)(b)

- ❖ Fit Employers use **Final Written Warning**, referencing policy from Handbook or work rule violated
- ❖ Warning signed by employee with 2<sup>nd</sup> supervisor as meeting witness



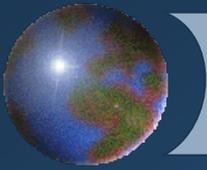


# Alabama UC Bootcamp

## Misconduct - Ala. Code §25-4-78(3)(c)

- ❊ Misconduct connected with work – No Prior Warning
- ❊ *Only Partial Disqualification (4-8 Weeks)*
- ❊ # weeks is dependent on seriousness of conduct
- ❊ Employer experience rating is only charged ½ of total benefits paid
- ❊ Prior warnings but for different misconduct –Judges and ADOL may take different positions

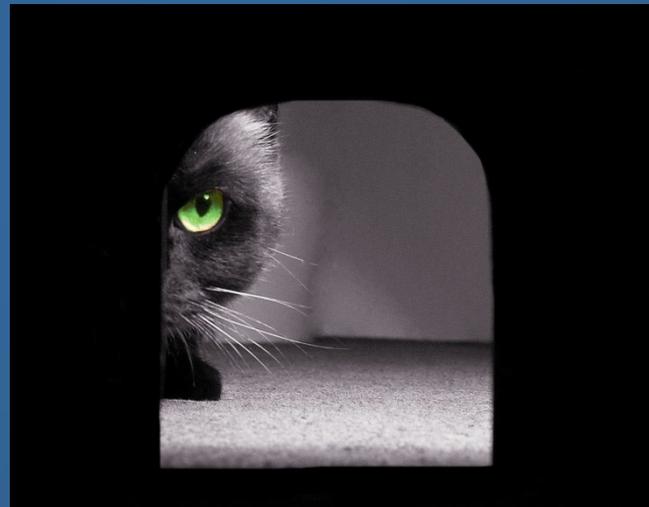


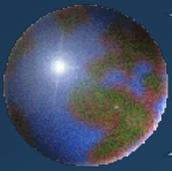


# Alabama UC Bootcamp

## Misconduct - Ala. Code §25-4-78(3)(c)

- ❖ Misconduct connected with work – No Prior Warning
- ❖ Fit Employers try to correct employee performance or conduct issues with Progressive Discipline
- ❖ Fit Employers show patience



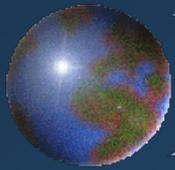


# Alabama UC Bootcamp

## License Revocation - Ala. Code §25-4-78(4)

- License essential qualification for position
- Not longer insurable at standard rates
- Fit Employers have job description with essential qualifications

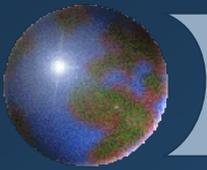




# *Alabama UC Bootcamp*

**Employer's duty to timely respond to UC examiners request for information - Act No. 2013-312**

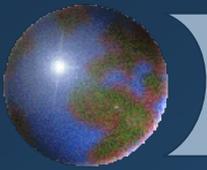




# Alabama UC Bootcamp

## Employer's duty to timely respond to UC examiners request for information - Act No. 2013-312

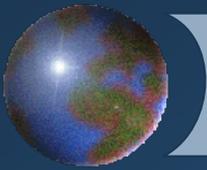
- ❖ SB201 Effective August 01, 2013
- ❖ Will be Codified under Ala. Code §25-4-78 ;
- ❖ Currently, if an employer fails to respond to our request for information on a UC claim (i.e. Ben241) and a claimant thereafter receives unemployment compensation because of that failure to respond, the employer is not penalized.



# Alabama UC Bootcamp

## Employer's duty to timely respond to UC examiners request for information - Act No. 2013-312

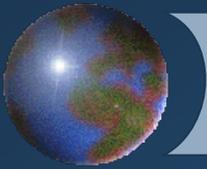
- ✦ Under this new law, the employer will still be liable for the charging because they failed to send in the initial information requested by ADOL. New law states that the employer is only charged if there is shown a pattern of failing to respond. (Two or more occasions – establishes a pattern) .



# Alabama UC Bootcamp

## Employer's duty to timely respond to UC examiners request for information - Act No. 2013-312

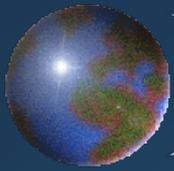
- ❖ Example: John Doe files a UC Claim. ADOL sends a request for separation information to Bob's Glass Shop where John Doe worked. Bob's Glass Shop fails to send in
- ❖ John Doe is determined eligible for benefits. When Bob's Glass Shop learns of the determination, they file an appeal in circuit court. On appeal, John Doe is found guilty of misconduct after warning and is disqualified.



# Alabama UC Bootcamp

## Employer's duty to timely respond to UC examiners request for information - Act No. 2013-312

- ❖ At this point John Doe has an overpayment, and Bob's Glass Shop is relieved of all charging. Under the new law, Bob's Glass Shop would still be liable for the benefit charges because they failed to respond to examiner's request for information.
- ❖ As a result, the employer would be charged, but ADOL would still collect the overpayment.

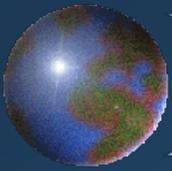


# **Alabama UC Bootcamp**

## **5 Step Bootcamp Fitness Plan**

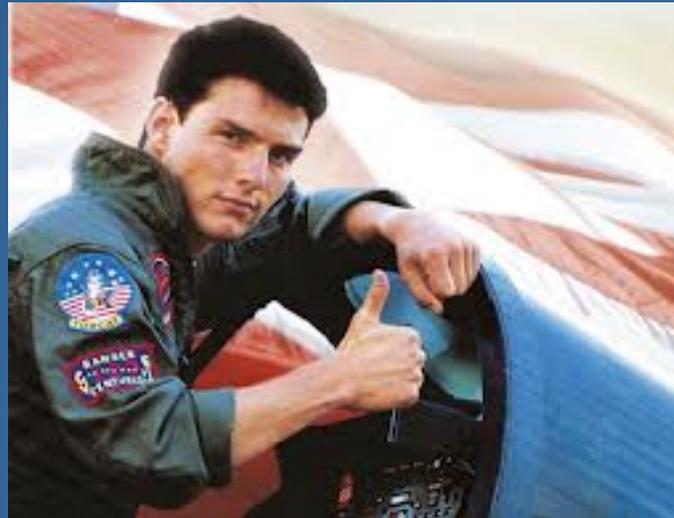
- 1. Use This Webinar To Train Supervisors**
- 2. Adopt Legally Complaint Employee Handbook and Rules**
- 3. Adopt Alabama Drug Free Workplace Policy**
- 4. Timely Respond to ADOL request & prepare to win UC Hearing**
- 5. Be diligent to protect your experience rating**

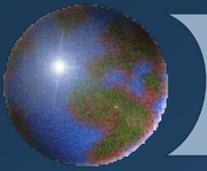




# **Success:**

*Because you can own this face of pure accomplishment*

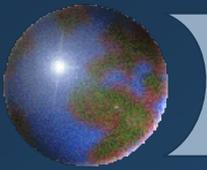




# *How to Contact Trainers:*

Joseph S. Ammons  
General Counsel  
Alabama Department of Labor  
649 Monroe Street, Suite 1801  
Montgomery, AL 36131  
334.242.8376 / 334.242.2080 (Fax)  
[joseph.ammons@labor.alabama.gov](mailto:joseph.ammons@labor.alabama.gov)  
[www.labor.alabama.gov](http://www.labor.alabama.gov)





## *How to Contact Trainers:*

**Tommy Eden**  
**Attorney at Law**

Constangy, Brooks and Smith,  
LLP  
709 3rd Ave  
West Point, GA 31833  
&  
3120-D Frederick Rd.  
Opelika, AL 36801  
(205) 222-8030  
[teden@constangy.com](mailto:teden@constangy.com)

**CONSTANGY**  
BROOKS & SMITH, LLP  
The Employers' Law Firm, Since 1946

**Rosemary Elebash**  
**NFIB/Alabama State**  
**Director**

7550 Halcyon Summit Drive,  
Suite 115  
Montgomery,  
Alabama 36117  
334 264-2261  
334 262-7451 fax  
[Rosemary.elebash@nfib.org](mailto:Rosemary.elebash@nfib.org)

**NFIB**  
The Voice of Small Business®