Alabama UC Bootcamp

Alabama Unemployment Bootcamp for Employers – Getting Fit to Win – Part 2

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
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."
25 Do’s and Don’ts of Winning an Unemployment Compensation Claim
#1 - Do’s and Don’ts of Winning UC Cases

- **DO document any and all performance issues**
  - Be objective and respective: Describe conduct do not characterize
  - Give examples of deficiencies or unmet objectives
#2 - Do’s and Don’ts of Winning UC Cases

⚠️ DO know your policies/handbook – and update on a regular basis
DO make a copy for employee of “evidence” (don’t give original to employee) and share
DO recognize evidence as “evidence” to begin with
DO use “evidence” as a teaching tool to turn employee around
DO make employees acknowledge in writing disciplinary actions
DO, if they refuse, document refusal and have 2 witnesses verify and sign document
DON’T forget your ABC’s (Always Be Consistent)

• Be objective in evaluation of situation
• Treat like situations alike
• Justify exceptions if different treatment
DON’T forget to develop a termination checklist
DO Consult your employment attorney if it is a high risk termination
DO have a witness attend termination meeting
DO follow handbook policy on oral & written post termination references

• Teach supervisors they speak for the Company

• Assume remarks are public or recorded
DON’T get hung up on trying to cast a termination as though the employee “fired him or herself.” If you fired the employee, take ownership of it and truthfully explain why
DO timely respond to ALDOL claim examiner's request to information
DO prior to completing the UC Employer Response BEN241:

- Locate signature for Employee Handbook receipt
- Determine policy violated in Handbook
- Gather all prior written discipline
- Collect witness statements
- Decide exactly which AL UC Disqualification section applies
DO prior to telephone hearing:

- Make a list of all witnesses to event leading to termination and witnesses to prior misconduct
- Mail or fax in advance all documents to hearing officer and claimant
- Have witnesses available who can testify from personal knowledge
DO consider using employment counsel for must win cases
DO tell the truth in the hearing process!
DO use only reliable witnesses at the hearing
DO during the telephone hearing:

- Be respectful
- Clearly state the UC disqualification section you believe applies
- Make an attorney like, well supported argument at the end
DO cross examine the claimant
DO appeal to Board if you lose:

- Timely fax Notice of Appeal
- Make a well supported written argument why the appeal should be granted (only 5% are)
DO be well prepared for Board hearing with live witnesses and documents

You Win
DO appeal to Circuit Court if you believe decision not correctly decided under the facts or the law:

- Must appeal within 30 days of final decision
- Most likely will need legal counsel to have chance of success
- Consider collateral estoppel effect of final UC decision
**DO** understand how the new Alabama Act will cost your experience rating if you do not timely respond

Wal-Mart won UC Hearing based on discharge of employee for misconduct connected with work

Employee filed Workers’ Compensation retaliatory discharge case in Circuit Court
Wal-Mart Stores, Inc. v. Smitherman, 743 So.2d 442
(Alabama Supreme Court 1999)

- Wal-Mart filed Motion for Summary Judgment based on UC misconduct disqualification

- Employee was collaterally estopped from re-litigating the reasons for her discharge
5 Step Bootcamp Fitness Plan

1. Use This Webinar To Train Supervisors
2. Adopt Legally Complaint Employee Handbook
3. Adopt Alabama Drug Free Workplace Policy
4. Timely Respond to ALDOL 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
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

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

NFIB
The Voice of Small Business®