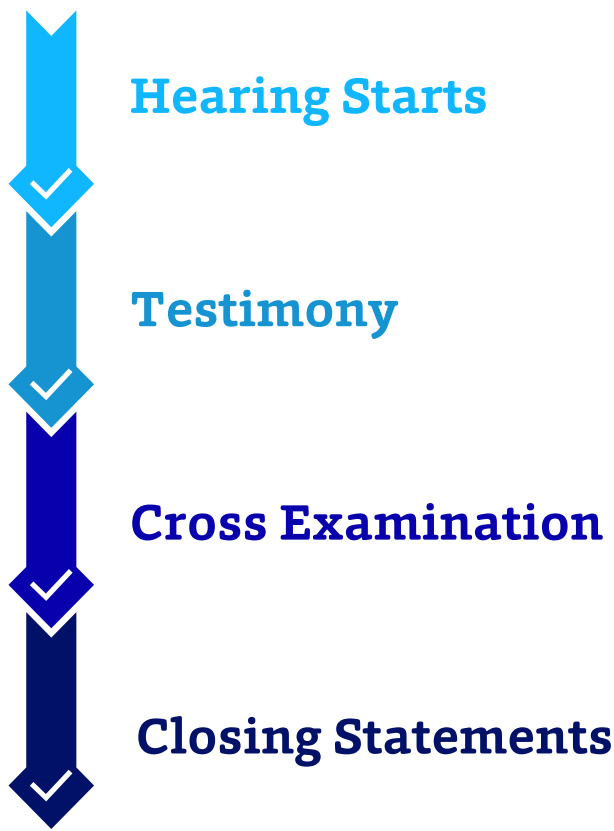


What is Unemployment Insurance?

Employers often misinterpret the difference between an unemployment hearing and a wrongful discharge lawsuit. The focus of state unemployment agencies is solely on determining whether the separation of the employee was due to reasons beyond their control, referred to as "misconduct" which involves deliberate disregard for the employer's interests. Although an employer may have valid reasons for terminating an employee, the employee may still be eligible for unemployment benefits.



- The hearing process will be explained by the state authorized Hearing Officer (Administrative Law Judge, Referee)

Hearing:

- Witnesses are sworn in
- Often, evidence will be admitted at this time. This is at the discretion of the Hearing Officer

- The burden of proof in an unemployment hearing rests with the party that initiated the claimant's separation. In a discharge case, the employer will testify first, and in the case of a quit, the claimant will testify first.

Testimony:

- Basics of employment (hire date, last day of work, termination date and reason for separation) are asked of both parties

- Whichever party testifies first, the other side will be able to ask questions, also known as cross examination.

Cross Examination:

- After cross examination, the opposing party will be able to present their side of the case.

- Once each party has presented all of their information, they will be allowed to present a closing statement.

Closing Statements:

- A closing statement is not required, it is possible to "Stand on the Record"

Who Should I Bring To The Hearing: Identifying an Effective Witness

Having the right individual present at the hearing is crucial and easy to determine. The ideal witness should possess firsthand and personal knowledge of the circumstances. This includes not only the final incident but also all incidents that played a role in the separation. It may be necessary to have multiple witnesses attend the hearing to provide a comprehensive account to the state representative.

Witness Checklist:

- Be on time
- Be prepared
- Dress appropriately
- Be an active listener
- Wait your turn
- Keep answers simple
- Watch Your Language-you are being recorded!
- Tell the truth
- Do not guess
- Do not use extreme statements
- Support your answers with facts, not conclusions
- Ask for clarification if you do not fully understand a question

After the Appeal:

- Review separation
- Determine action plan
- Gather documents - These documents must have been submitted during the initial claim stage. The Hearing Officer may refuse to see or hear additional evidence.
- Identify potential witnesses

Hearing Notice Received:

- Make notice of the time, date and place of the hearing
- Contact witnesses to determine availability – If a witness is unavailable Unemployment Tracker will request a postponement
- Unemployment Tracker will schedule a call with all witnesses to prepare for hearing

The Hearing:

- Employment basics -hire date, last day of work, job title and rate of pay documents related to the reason for separation.
 - These should be arranged by date most current document to oldest for each party.
- Bring witnesses

What to bring to the hearing:

Voluntary Quit:

- A copy of the claimant's resignation letter, if one was provided.
- The individual who spoke to the claimant regarding their resignation. This person's testimony can be critical in the hearing if the claimant alleges issues during the unemployment hearing that they did not raise before they resigned.

Discharge:

Violation of Company Policy, Falsification of Records, Insubordination, etc.

- Details of the incident that resulted in his/her discharge. The details of the issue are critical to prove the case.
- How the incident was discovered and substantiated. It is critical to present first-hand testimony to the incident, if possible. If the individual who witnessed the actual violation and the individual who discharged the claimant are different, it is better to have both present for the hearing. Written statements from witnesses to the incident are considered hearsay in an unemployment hearing and cannot overcome the claimant's first-hand testimony.
- A copy of the policy that was violated and the claimant signed acknowledgment that they received and had the responsibility to review the policy/handbook.
- Copies of any prior warnings or disciplinary actions that were issued to the claimant. It is always best to provide a copy that was signed by the claimant to be able to prove that they were aware of the warning and that their job could be in jeopardy if they received further disciplinary actions.

Reminder: The documents listed must be submitted for the initial claim. The Hearing Officer has the right to refuse any new evidence.

What To Bring To The Hearing:

Attendance/ Violation of Attendance Policy

- Details of the final attendance occurrence including whether the claimant was absent or tardy, whether they followed the required call in procedures, and what reason they gave for being absent or tardy, if a reason was given. (It will be important to have the reason they provided even if the company's attendance policy is a no fault policy.)
- A copy of the company's attendance policy and the claimant's signed acknowledgment for receiving the policy or handbook that contains the policy.
- Copies of any prior disciplinary actions or warnings issued to the claimant regarding his/her attendance.
- The claimant's attendance calendar/record, if available.

Unsatisfactory Performance:

- Details of the final incident or evaluation that resulted in the decision to discharge the claimant.
- Details of any specific procedures or instructions that the claimant failed to follow which could have had an impact on their failure to meet the required performance goals.
- Copies of any prior disciplinary actions, warnings, or PIPs that had been issued to the claimant regarding their performance issues

Employers Role In The Hearing Process:

Upon Receiving Hearing Notice:

- Inform witnesses of the time, date, & place of the hearing
- Be available for pre-hearing conferences

At The Hearing:

- Be a great witness!

Hearing Decision:

- Review facts with Unemployment Tracker Hearing Coordinator

After The Hearing: What To Expect:

Upon the conclusion of the hearing, the Adjudicator will have reviewed all testimony presented. They will then make a determination on whether to affirm or overturn the initial decision on the claim. The outcome of the hearing will be communicated to all parties involved in writing, ensuring a clear and definitive resolution.