Unemployment 101

Protesting unemployment claims -why does it matter?

An employer's state unemployment tax rate is assigned each year based on some macro-economic factors that impact all employers' tax rates, and some specific factors such as gross taxable payroll that impact an individual employer's tax rate, but the only controllable variable is the amount of unemployment benefits charged against the employer's unemployment account. For every $1 in unemployment benefits paid to a former employee and charged against an employer's unemployment account, it's estimated that the employer will pay $1.39 on average in unemployment taxes to cover both the benefits paid to former employees and the administration of the unemployment system. While some unemployment claims can be a cost of doing business, such as a lack of work or inability to meet the job requirements, there are many situations where an employer can protest an employee's eligibility for unemployment benefits or their chargeability on the claim.

How is the potential liability and impact to our unemployment account determined?

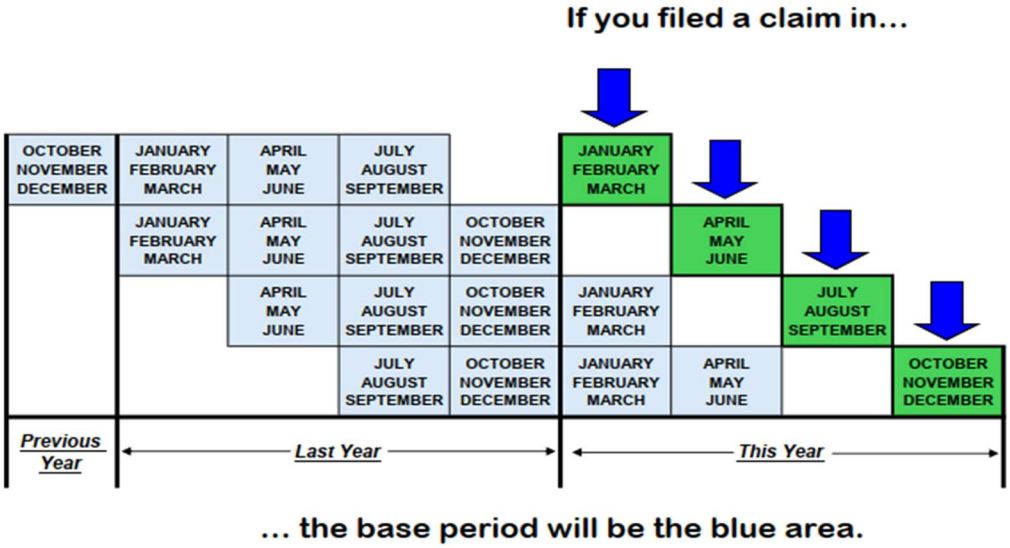
When an employee files an unemployment claim, the state unemployment agencies determine the potential liability to each employer's unemployment account on the claim in different ways, but there are two primary methods.

There are a few states where only the most recent employer has 100% of the potential liability on the claim. They have different determining factors on what qualifies an employer to be the liable employer which vary from length of employment or a minimum amount of gross wages. There is sometimes a misconception that this is the standard across all state unemployment agencies, however, this is a small minority of states.

Most states use a proportional or inverse charging method for unemployment claims which means the liability for one unemployment claim could be shared by more than one employer. When a claim is filed in these states, the state looks at the base period for the unemployment claim, which is the first four of the last five completed calendar quarters, and every employer that paid wages to the employee during that base period shares a portion of the potential liability on the claim. If an employer paid 10% of the potential wages to the employee during the base period, they have 10% of the potential liability on the unemployment claim. The state will first review the separation from the most recent employer which resulted in the claim being filed, and the state's ruling on that separation determines whether the employee is eligible for benefits and the chargeability status for that employer's SUI. Every other employer that paid wages during the base period also receives a claim requesting information on the employee's separation. These base period claims only

determine if the base period (or secondary) employer's unemployment account will be charged if the employee draws benefits, but they do not impact the employee's eligibility for benefits in most states.

Along with determining which employers are potentially liable, the employee's gross wages from all employers during the base period are used to determine how much the employee could draw in benefits each week and the maximum number of weeks the employee could potentially draw in benefits if they remain unemployed. The weekly benefit amounts and number of weeks of potential eligibility vary greatly across the states.



What can an employer do to keep our tax rate as low as possible?

While some unemployment claims, such as a lack of work situations, are what the unemployment system was originally designed for and are not protestable, there are many separations that by unemployment law should not be a payable claim or result in charges to an employer's unemployment account.

If an employee is discharged due to ***willful misconduct in connection with the work*** or if the employee voluntarily quits without good cause, the employee can be disqualified for receipt of unemployment benefits. There are nuances across the states on what constitutes misconduct in a discharge case or good cause in a quit situation, but the general principles are common.

In a discharge case, the burden of proof is on the employer to prove that the employee was discharged due to willful misconduct. This could be a violation of a known company policy, insubordination, a pattern of

excessive absenteeism or tardiness without good cause, inappropriate behavior, etc. The employer must prove that the final incident that caused the discharge was within the employee's control, and they were aware that their actions could result in disciplinary action. In some situations, the state might consider a one-time incident egregious enough to be considered misconduct, but in many cases, such as unacceptable attendance, the states require that the employee be warned for prior violations and made aware that further infractions could result in their termination to prove misconduct.

In a quit situation, the burden of proof is on the employee to establish that they quit with good cause, and in most states, they must prove that it was due to good cause related to the work. Even if they can prove they quit with good cause related to the work, they must also prove they exhausted all reasonable efforts to remain employed before they quit. Ultimately, this means unless they quit due to an immediate threat to their safety or personal license or certification, etc. caused by the employer, they must also show they made the employer aware of their concerns and gave the employer an opportunity to resolve their issues before they quit.

Keeping detailed records and following a uniformly enforced disciplinary policy are critical to having the necessary details available when an unemployment claim is filed. Thinking back to the base period, if an employee separates today and files an unemployment claim immediately, an employer will have a fresh memory of the separation details. However, if they immediately go to work for another employer, separate from that employer in the future, and then file a claim, the details of their separation might not be needed until as far as 18 months in the future. Recording the details when they happen ensures critical details are not forgotten over time or if it ends up being someone else who must provide the details to the unemployment claim.

The unemployment claim process across all the state unemployment agencies is deadline driven and every request must be responded to timely with the details of the employee's separation. If the details are provided late or if there are no specific details provided to an unemployment claim, an employer can lose their right to protest their liability on an unemployment claim or appeal a determination that is unfavorable.

After a response to a claim is submitted, the state agency will review all information provided by all interested parties to the claim and issue a determination. The unemployment system has a very human element, and each claim has a level of subjectivity to it, so a claim could be ruled differently depending on the state in which it was filed or even depending on which adjudicator at the state reviews the claim.

If a determination finds an employee eligible for benefits or an employer's account chargeable, there is an opportunity to file an appeal and request a hearing be scheduled, while an employee has the same right to file an appeal if they are disqualified for benefits. When an unfavorable determination is received, the details of the claim should be reviewed as objectively as possible to determine whether an appeal should be filed. If an employer feels that they have a strong case to prove willful misconduct or that a quit was without good

cause, they should file an appeal. It's not advisable to take a blanket approach to appeal every claim, or to never appeal any claims. Each claim should be evaluated on its own merits to determine if an appeal should be filed.

When a determination has been appealed by either the employer or employee, and a hearing is scheduled, it is critical for witnesses with direct, first-hand testimony to the employee's separation to participate in the hearing. While there is some formality to an unemployment hearing, the only issue being determined is the employee's eligibility for unemployment benefits. The hearing officer is required by law to give the most weight in their decision to first-hand testimony provided under oath in the hearing.