

UNEMPLOYMENT CLAIMS**Legislature makes it easier to fight unemployment claims**

by Dinita L. James

Republican state legislators heeded the complaints of Arizona business groups about workers who walk off the job and then file for unemployment benefits. A bill signed into law by Governor Jan Brewer on March 28 places the burden on the worker to prove entitlement to unemployment benefits.

Background

Arizona's unemployment insurance program is funded from taxes paid by employers. Employer premiums are based on claims experience. Employers also pay a federal unemployment tax, known as FUTA, which is collected by the federal government and used to administer the program at both the federal and state levels.

The program is designed to provide a measure of economic security to individual workers and the community when unemployment occurs for reasons beyond a worker's control. Under current law, the burden is on employers to prove fraudulent claims.

Shifting the burden

The Arizona Legislature, on a party-line vote in both chambers, has approved House Bill (HB) 2147, which will shift the burden of establishing valid claims to employees once the law becomes effective. The effective date of HB 2147 will be 90 days after the legislature adjourns.

The Arizona Department of Economic Security (DES) administers the state's unemployment insurance program. HB 2147 requires DES to issue regulations enforcing the new law. DES hasn't set a timeline for the rulemaking process, so it's unknown whether the regulations will be in place on the law's effective date.

Key features of HB 2147 include the following:

- DES must require an individual claiming benefits to provide supporting information and documents at the time the claim is filed. If DES determines the individual has the ability to provide the required documentation or information but he fails to do so, the agency can deny the claim until the documents or information is provided.
- DES still has the ability to request that an employer provide documentation that would allow the agency to determine a claimant's eligibility for benefits.

- If an employer provides documentation that a claimant either voluntarily resigned or abandoned his job, the burden shifts to the claimant to submit documentation sufficient to prove eligibility for benefits.

The new law spells out the kind of documentation an employer can provide. If the worker didn't tender a written resignation, the employer can provide an "attestation" confirming that he gave an oral resignation and that work was available for him. Likewise, to show job abandonment, the employer can provide an attestation that the worker failed to report for an assignment and that work was available.

Lawsuit looming

Democrats and worker advocacy groups were very vocal in their opposition to the legislation. In a news conference on the senate lawn after the bill was passed and sent to Governor Brewer for her signature, Majority Leader Leah Landrum Taylor (D-Phoenix) said: "This is something that is completely unfair and it also kicks an individual when [she is] down."

Critics also said it would be nearly impossible for workers to prove they were let go because they wouldn't have access to the documents they need since such documents are typically in the hands of the employer.

Representatives of the William E. Morris Institute for Justice, a nonprofit group with a litigation director and staff attorney based in Phoenix, have argued that the measure violates federal law, which requires states to determine whether people are entitled to unemployment benefits. It wouldn't be surprising if the institute or some other worker advocacy group files suit to try to block the new law.

Bottom line

The details of how the new law will be implemented won't be known until DES issues its regulations. Arizona employers still will be entitled to notice when a former worker files a claim for unemployment benefits. It may be beneficial for employers to volunteer their attestations when claimants have quit or abandoned their jobs.

We will monitor the DES rulemaking process and report on the progress of HB 2147's implementation in future issues.

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