Unemployment Insurance
Cost Containment Strategies to Know and Follow

By Wm. Michael Schiff

Contesting unemployment insurance (UI) claims are part and parcel of most every human resource professionals job. In good economic times and bad, employees part ways with their employers and unemployment claims get filed. In fact, there is some reason to believe that during prosperous economic times, when jobs are plentiful, certain employees are more likely to jump ship (or walk the plank of discharge) under circumstances that can lead to the filing of an unemployment claim.

As an HR professional or someone serving in a role that deals with unemployment issues, you can help your employer control compensation costs by knowing the rules and following these unemployment insurance cost containment strategies:

• **Understand Indiana’s unemployment statute and how the law operates.** Unemployment compensation is a government-provided benefit for Indiana wage earners who are unemployed through no fault of their own and need temporary financial assistance while they search for a job that is compatible with their individual skills and talents. Become familiar with the Department of Workforce Development’s (DWD) rules and regulations by reading available materials, attending education programs and accessing the DWD's web site at www.in.gov/dwd.

• **Protest claims judiciously and in a manner consistent with the purpose of the unemployment statute.** Consistent with the purpose of the law, workers who: quit without good cause, are discharged for just cause, are unable or unavailable to work, fail to actively seek new employment or refuse suitable work offers are deemed responsible for their own unemployment and their claims for benefits should normally be consistently challenged. However, before filing a protest, consider whether you can present a credible challenge to the claim. For example, have you carefully documented both the discharged worker’s rule violation and your uniform and consistent enforcement of the rule? Are you certain the employee lacked good reasons for quitting employment?

• **Know and follow the DWD’s Claims Procedures and Rules when contesting UI claims or appealing decisions.** Read carefully the DWD’s notification that a former employee is claiming benefits, making sure you have calendared the deadline for protesting the claim. If you believe the claimant is at fault for the unemployment, file a timely protest of the claim and provide all relevant information to the DWD’s UI adjudication office in Indianapolis. Promptly respond to any requests for information received from a claims deputy.

• **When protesting claims or filing appeals, be sure to document and preserve evidence of your timely actions.** Make sure you create and preserve a paper trail of your actions. Mail gets misdelivered, faxes get lost, e-mails drift into cyberspace and unless you have documentary evidence of your timely actions in sending information to the DWD, you may be unable to successfully appeal issues relating to timeliness or failed appeals.

• **When notified of an ALJ hearing, give consideration to typical pre-hearing issues.** By statute, you should receive at least 10 days advance notice of an Administrative Law Judge (ALJ) hearing. If you have not received appropriate notice, consider a protest if the late notice adversely impacts your preparation or availability of witnesses for the hearing. Keep in mind that if it will be necessary to subpoena witnesses or records, a request for subpoenas to the ALJ must be delivered in time to allow for service of the subpoenas by the unemployment office.

  Consider whether a telephone hearing would work to your benefit. The DWD has been utilizing telephone hearings more frequently in recent years as a means of saving time and money for everyone involved. Current Indiana law and regulations prescribe the circumstances under which telephone hearings may be conducted. Know these rules and use them to your benefit to either request or protest the scheduling of a phone hearing.

• **Know your order and burden of proof for presenting evidence and prevailing before the ALJ.** The initial burden of proof and the order in which you must present your case before the ALJ will vary according to the issues presented. Examples of common issues and the usual order/burden of proof: timeliness of appeal (untimely party); discharge (employer); constructive discharge, involuntary resignation or “quitting in lieu of discharge” (employer); voluntary resignation or quitting (claimant); able, available and seeking full-time work (claimant); involuntary unemployment due to physical disability (claimant); refusal to accept suitable work (claimant); participation in labor dispute (varies); deductible income (varies).

• **Prepare, prepare and prepare some more for the ALJ hearing.** Although ALJ hearings are informal, quasi-judicial proceedings, proper preparation is essential to the successful presentation of an employer’s case. Keep in mind the ALJ hearing is usually your only opportunity to present witnesses and exhibits to support your case. Your presentation to the ALJ is the record on which you or your counsel must rely should further appeals become necessary.

• **Consider an appeal to the review board should an adverse ALJ decision be received.** If an appeal of the ALJ’s decision becomes necessary, consider requesting a copy of the cassette tape of the hearing. If you obtain a copy of the tape recording before the ALJ, review it carefully and persuasively point out in your written argument the errors committed by the ALJ in ruling against you. If there is evidence that is newly discovered or was not previously available to you at the time of the ALJ

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hearing, make a formal request in accordance with DWD rules and regulations to have this additional evidence be made a part of the record.

- **Maintain accurate records and file all required reports in a timely fashion.** DWD rules require employers to maintain records indicating your employees' names, Social Security numbers, quarterly compensation, dates employed and worked, reasons for separations from employment, status as full or part-time workers and each worker's base operations. Be certain that your quarterly wage reports are submitted before the end of the first month following the end of the quarter covered by such report, even if you had no payroll for that quarter. Failure to file timely reports can lead to audits, legal action and penalty tax rates. Notify DWD when a mass layoff is anticipated or a labor dispute results in a work stoppage. Report any retroactive wage payments made to employees since these may be deductible from unemployment benefits and result in a crediting of your account.

- **Audit the reports you receive from DWD.** Check your monthly Statement of Benefit Charges (Form 535) to be sure benefits are not being improperly paid to ineligible claimants. Audit your annual tax rate notice. If you believe information has been omitted or is in error, contact DWD and request a review of the rate.

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**Watch Out**

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**Information Link**

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To receive your Circle of Life kit and to learn more about this life-saving program, contact:

Rick Pessom  
Circle of Life Program Coordinator  
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