



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

HOW TO PROTECT YOUR NONPROFIT FROM UNFOUNDED UNEMPLOYMENT CLAIMS

Introduction and Background

Unemployment benefits provide a financial bridge for unemployed individuals to their next source of employment. The unemployment system, however, has a high propensity for being subject to abuse, fraud, and improper claims. With these concerns in mind, this article provides information to ensure you, a nonprofit employer, are in compliance with the Georgia Department of Labor (the "GDOL") guidelines and to protect your nonprofit organization from improper unemployment claims.

If your 501(c)(3) nonprofit organization employs at least four employees in twenty different weeks during a calendar year, you are an employer required to pay Georgia unemployment insurance. Nonprofit organizations with fewer than four employees do not have to pay unemployment insurance, and their employees are ineligible for unemployment benefits. Nonprofit employers that are required to pay Georgia unemployment insurance can choose to pay unemployment insurance one of two ways:

- (1) on a regular basis as a percentage of payroll through the "contribution" method; or
- (2) through the "reimbursable" method, where the organization would reimburse the GDOL for the actual costs of benefits paid by the GDOL to eligible former employees.

Organizations that choose the "contribution" method will be mailed an Employer Quarterly Statement of Benefits Charges whenever payments to former employees are disbursed during a quarter. Meanwhile, organizations that choose the "reimbursable" method will receive a Reimbursable Employer Quarterly Bill whenever benefit payments are to be reimbursed. For additional information on these two payment methods, please see "Unemployment Insurance for Nonprofit Organizations" http://www.pbpatl.org/wp-content/uploads/2011/11/Unemployment_Insurance_for_Nonprofits1.pdf

Eligibility to Receive Unemployment Benefits

In order to be eligible to receive unemployment benefits following separation from an employer, an individual must be:

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- Able to meet certain wage requirements:
 - Base period wages (defined as the first four of the last five completed calendar quarters immediately preceding the effective date of a claim for unemployment benefits) earned with a liable employer in at least two of the four quarters in the base period of the claim;
 - Earned at least a total of \$1,134 in the two highest quarters of the base period; and
 - Possess total base period wages equal to or exceeding one and one-half times the amount paid in the highest quarter (Note: a secondary computation may be made when this criterion is the only one that cannot be established);
- Totally or partially unemployed through no personal fault or work-related misconduct;
- Physically able to do some type of work;
- Available to accept work; and
- Actively seeking full-time, continuous work (or part-time work, if instructed by the GDOL).

If an individual is eligible to receive unemployment benefits under these criteria and actually files an unemployment claim, the individual (“claimant”) must have good cause for refusing to accept suitable work. Factors considered in determining work suitability include:

- claimant’s health,
- safety,
- morals,
- physical fitness,
- prior training,
- experience,
- prior earnings,
- length of unemployment,
- prospects for securing work in the occupational skill, and
- the distance from residence to available work.

A claimant that has been compensated for accrued, but unused, annual leave, vacation pay, sick leave, or payments from employer-funded plans is still entitled to receive unemployment benefits.

An individual cannot receive unemployment benefits during any periods where he/she:

- Takes a leave of absence or vacation at his/her own request (whether paid or unpaid);

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- Leaves his/her most recent employer voluntarily without cause (i.e., due to resignation);
- Refuses temporary, comparable work assignments without good cause;
- Becomes discharged or suspended for failure to obey orders, rules, or instructions or perform duties for which employed;
- Voluntarily quits attending, without good cause, or is dismissed from a GDOL agency-approved training course due to failure to abide by training facility rules;
- Participates in, finances, or expresses direct interest in a labor dispute;
- Receives workers' compensation for temporary partial or temporary total disability under the workers' compensation law of any state or under a similar law of the United States;
- Receives benefits or seeks unemployment compensation in any other state or territory of the United States; or
- Receives payment from the employer after his last day of work in the form of wages in lieu of notice, terminal leave pay, severance pay, separation pay, dismissal payments, or any other type of wages if the compensation for any week exceeds claimant's weekly benefit amount.

Actions to Take when Separating Employees and Responding to Unemployment Filings

When an employee leaves your organization for any reason, you must complete, date, and deliver Form DOL-800, Separation Notice to the individual on his or her last day of work. If it is not possible to deliver the Separation Notice on his or her last day of work, you must mail it within three days of separation to the employee's last known address. If the separation was voluntary, then the Separation Notice should state the employee's reason for leaving. If the separation was involuntary, then the Separation Notice must state clearly and succinctly the reason for termination (i.e., failure to meet performance expectations), length of employment, rules the employee violated and relevant prior warnings claimant received. The Separation Notice is essential to challenge unemployment claims. If the information is detailed and results in disqualification, the organization will not be required to pay benefits.

If the employee files an unemployment claim, the GDOL will mail the most recent employer a Notice of Claim Filing, which contains claimant's statement as to the circumstances relating to the separation. The GDOL will also mail the most recent employer Form DOL-1199FF, Request for Separation Information (except in lack of work separations where claimant presents to the GDOL a Separation Notice showing lack of work). The Request for Separation Information is a follow-up questionnaire to the Separation Notice that asks for a detailed statement regarding the reason for separation. After receiving the Notice of Claim Filing and/or Request for Separation Information, you should take the following steps:

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- Confirm claimant was an employee;
- Ensure claimant worked the base period and earned the wages the GDOL requires to qualify for unemployment benefits (see above);
- Verify you were the last employer;
- Determine why claimant was separated;
- Identify and preserve relevant documentation, including payroll, attendance, and discipline records, personnel policies and procedures and emails;
- Interview potential witnesses with first-hand knowledge of reasons for separation (Note: it is a good idea to record the interviews or take statements); and
- Timely mail or fax responses to the GDOL Central Examining Unit and include detailed reasons for the separation, copies of the Separation Notice, warnings, reprimands, performance appraisals, attendance records, and any other documents regarding separation (Note: an employer who does not submit timely separation information will not receive credit for overpaid benefits if the employer's subsequent appeal of the claim later results in a disqualification).

In responding to a Request for Separation information:

- stick to the facts when responding;
- maintain a professional tone;
- be clear on the reasons for separation, and;
- only give reasons that can be supported (Note: you will have immunity from any defamation claim claimant may attempt to assert against you for any representations you make; however, do not attack claimant).

After thoroughly reviewing the Notice of Claim Filing and supporting documentation and confirming that you have complied with the GDOL requirements, you may decide to challenge claimant's filing if you find any of the following conditions apply:

- Your organization was not the last employer;
- Your organization was the last employer, but claimant was discharged with cause because he/she:
 1. Misrepresented qualifications for the position;
 2. Engaged in misconduct, such as violation of known work rules that were written, consistently enforced, and known by claimant to likely result in discharge;
 3. Had unsatisfactory job performance, such as failure to meet established written standards he was given written notice of and a plan within his control to reasonably improve upon, but he did not make a reasonable effort to improve; or

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4. Had attendance issues, such as violation of known, reasonable written attendance standards that were consistently enforced, without good reason, or job abandonment evidenced by failure to call in or show up; or
- Claimant is not an employee and is instead an independent contractor (Note: this argument could result in liability if claimant was incorrectly classified as an independent contractor, so consult an attorney if possible).

Navigation of the GDOL Investigation and Appeal Stages

The GDOL Investigation

You will have ten days from the filing date of the unemployment claim to furnish separation information. The GDOL will then conduct a fact-finding Benefit Eligibility Review which may include a telephone interview. The GDOL will then issue a written determination to you and claimant following the Benefit Eligibility Review.

First Level of Appeal – Appeals Tribunal with Administrative Hearing Officer

You, as employer, and claimant may file an appeal to challenge an adverse determination by submitting a written request for appeal within fifteen days of the determination by mail, in person, or by fax with the Career Center indicated on the determination. Any timely written statement received in a GDOL office within the fifteen-day limit or mailed within that time frame and signed by the employer or a designated representative stating dissatisfaction with the written determination will initiate an appeal to an administrative hearing officer.

The opposing party will be notified of the appeal filed, and a hearing before an administrative hearing officer will be scheduled in the order received. You and claimant will be mailed, in advance, a notification of the hearing schedule containing the date, time, place, name of the administrative hearing officer and issues to be decided. Pay attention to what the issues are and what will be considered.

Most hearings are held within two to three weeks of the date the appeal is filed. If you know of any dates or times you or your witnesses will not be available, advise representatives of the Appeals Tribunal immediately. Appeal hearings are generally conducted by telephone. If you object to a telephone hearing, an in-person hearing may be requested; however, you must travel to the hearing location nearest claimant.

The administrative hearing officer is empowered to hear testimony, rule on objections, consider evidence, weigh credibility of witnesses, and make determinations. You must present all witnesses and information at this level of appeal if you want the testimony to be available for consideration in any future appeals. Either side may present witnesses. Make sure your witnesses are credible, have first-hand knowledge, and are decision-

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makers. If a witness refuses to appear voluntarily, either party may obtain a subpoena from the chief administrative hearing officer as soon as the notice of hearing date is received. Whenever possible, use documentation, such as work rules or policies violated, acknowledgments, counseling, warnings, statements, work samples, and attendance records. You can cross examine claimant and you can present a closing statement in which you should establish the conduct that resulted in discharge was within claimant's control.

In preparing for the hearing you should conduct a complete internal investigation, develop a position that is consistent with documentation, and monitor what is put in writing (especially admissions and conclusions).

Throughout the process, the burden of proof will be on you as the employer. Assumptions are swayed in favor of claimant, who will get free discovery. The process may expose weak witnesses or poor documentation. The scope of the hearing is determined by an administrative hearing officer and may not be consistent. To increase your likelihood of success at the hearing, seek legal representation, particularly if you anticipate claimant will sue the organization.

The appeal to the administrative hearing officer will result in a written decision affirming, reversing, or modifying the initial determination. The written decision will be mailed within a reasonable time, usually within ten to fifteen days after the close of the hearing and will contain a description of pertinent facts, reason of law, and the decision. The decision will give the appeal rights and the date the decision becomes final if no further appeal is filed.

If a determination which allowed benefits is reversed, claimant will be required to repay the benefits he/she received during periods where he/she was actually ineligible or disqualified.

Second Level of Appeal – Board of Review

Following the written decision by the administrative hearing officer under the first level of appeal, you and claimant will have a second opportunity to appeal. This appeal must be made in writing within fifteen days to the Board of Review (the "Board"), a three-member panel appointed by the governor.

The Board does not take testimony, and no new evidence may be presented at this stage. The Board reviews a transcript or recording of the first level appeal hearing, which you can order. The Board does not have a set schedule for meetings. So, requests to argue in person before the Board must be made in writing within ten days of the date the Board's acknowledgement of the appeal was mailed. If permission is granted to appear before the Board, both parties will be notified of the time and place.

After review, the Board will release a written decision to both parties.

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Third Level of Appeal – Superior Court of County Where Claimant Last Employed

For the third level of the appeal process, you and claimant may appeal within fifteen days of the Board's final decision to the Superior Court in the county where claimant was last employed. If claimant was last employed in another state, the appeal must be filed in Fulton County Superior Court. All documents, papers, and the transcript of all testimony taken at the first level appeal hearing, along with the Board's findings of fact and decision, may be presented to the court. The Superior Court only corrects errors of law and will not substitute its own findings of fact.

Once the Superior Court renders its decision, an appeal may be taken to the Court of Appeals of Georgia in the same manner as is provided in civil cases.

Additional Resources

For additional resources regarding unemployment taxes and benefits, visit the Georgia Department of Labor website available via the following link:

http://www.dol.state.ga.us/em/unemployment_taxes_and_benefits.htm

For additional information on Georgia's unemployment tax system, including appeals of improper claims, see [Georgia Unemployment Insurance](#).

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