

# Understanding Georgia's Unemployment Security Laws



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May 19, 2021

# Mission of Pro Bono Partnership of Atlanta

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To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals.

We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

# Client Criteria

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In order to be a client of Pro Bono Partnership of Atlanta, an organization must:

- Be a 501(c)(3) nonprofit.
- Be located in or serve the greater Atlanta area.
- Serve low-income or disadvantaged individuals.
- Be unable to afford legal services.

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# Legal Information

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

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# Agenda

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- ◆ General Rules on Who Is Entitled to Unemployment Insurance
- ◆ Key Information to Present Regarding the Initial Claim
- ◆ When Is It Important to Fight an Unemployment Compensation Claim
- ◆ What You Need to Know About the Hearing Process
- ◆ Traditional Ways to Manage Unemployment Compensation Costs

# What are Unemployment Benefits?

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- Cash payments to eligible employees who are no longer employed by you “through no fault of their own.”
- Benefits are fully funded by taxes paid by employers into an Unemployment Insurance Trust Fund.
- All employers have some obligations under the unemployment security laws, but not all are required to pay taxes into the system.
- Your employer status determines whether and how much you are required to pay into the GA unemployment system.
- You should have set up an unemployment insurance account with the GADOL into which your contributions are paid.

# Are non-profits required to pay unemployment taxes?

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- Non-profit organizations are required pay into the system if they have at least **4** employees who work some or part of a day in each of 20 weeks during a calendar year.
- Georgia only recognizes non-profit organizations that have been issued a 501(c)(3) exemption by the federal IRS.
- Independent contractors do not count towards the 4 employee threshold **IF** they truly are independent contractors. Independent contractor status is a **really high bar to reach** and many employers get it wrong.



# Reimbursable v. Contributory Employers

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The Federal Unemployment Tax Act of 1972 allows 501(c)(3) non-profits to opt out of the state unemployment insurance system to become a “reimbursable employer.” When an organization operates as a reimbursable employer, it reimburses the state for unemployment benefits actually paid to each employee, rather than paying unemployment taxes.

# Who is Eligible for Benefits?

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- Employees who have earned enough money in the base period to set up a claim;
- Employees who become unemployed “through no fault of their own”;
- Employees who are able to work, available to work, and actively seeking work each week they claim benefits; or
- Employees enrolled in a valid training program

# Eligibility, cont'd.

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- Employees who resign their employment may still be eligible to draw benefits.
- Such employees must show they resigned or quit for good work-connected reason(s) like:
  - A material change in working conditions;
  - A material change in a working agreement;
  - Nonpayment for work; or
  - Other similar reasons
- Not a personal reason even if good or compelling

# Martha and Ted

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- Front desk clerk Martha has worked for Ted for just over a year. Martha is chronically late for work. Ted has had enough and tells us he finally terminated Martha for excessive tardiness.
- We ask Ted, “how long has this tardiness been going on and what did you tell Martha the last time you counseled her about her tardiness?” Silence.
- Ted confesses he had not directly spoken to Martha because “she just ought to know that she needs to be on time or she will lose her job.” More silence.

# Martha Gets Unemployment Benefits

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- Ted calls you and he is livid. He tells you the DOL awarded Martha unemployment benefits. “I terminated Martha’s employment for good reason! It’s not my fault that Martha is always late to work. She’s a grown up and ought to know better. ”
- He wants to know how is it possible that someone who **violated a legitimate work rule was awarded unemployment benefits.**

# Statutory Disqualifications

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- Georgia will disqualify employees for benefits where evidence shows employee:
  - Violated Absenteeism or Tardiness Policies
  - Failed to follow work rules, orders, instructions or failure to discharge the duties for which employee was employed
  - Conduct resulted in property loss or damage (must show act was intentional and amounted to \$2000 or more)
  - Engaged in physical fight or threatening behavior
  - Failure to accept or apply for work
  - Failing drug or alcohol policy
  - Resignation
  - Vacation

# The Employer's Burden

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- An employer must not only give a legitimate reason for an employee's termination, but also:
  - Show the employee knew about the policy or work rule at issue; and
  - Show the employee has been given sufficient time to improve before the termination
  - Note: Georgia DOL now requires employers to provide written notice to employees that poor attendance and excessive tardiness are terminable offenses.

# “Unemployed Through No Fault of Their Own”

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- What you do **before** a termination occurs plays an integral role in determining whether unemployment benefits will be awarded
- The employer bears the burden of proof when contesting an unemployment claim
- Don't rely on “it just makes sense”



# Preemptive Strikes to Avoiding Eligibility Determination

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- DO regularly evaluate employee performance
- DO consistently follow discipline policies in the company's handbook
- DO allow an employee time to correct poor performance
- DO document the reason for termination in detail
- DO provide complete GA DOL Form 800 Separation Notice
- DON'T surprise an employee with termination
- DON'T knee jerk a reaction to poor performance
- DON'T rely on verbal communications
- DON'T forget to have clear, well-supported reasons for termination

# The Claim Arrives – Now What?

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- ◆ **Dates of employment.** This is critical information to determine whether the former employee is benefits-eligible.
- ◆ **Compensation earned.** Also crucial information to determine whether former employee is benefits-eligible.
- ◆ **Severance paid (if any).** In Georgia, a former employee is usually not eligible for unemployment benefits during a period covered by severance being paid to them by their employer.
- ◆ Ensure clarity and consistency with **reason(s) for termination**

# Be Clear on Termination Reason

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- The names and titles of the individuals involved in the terminating incident;
- A description of the date, time and location of the events leading to the termination circumstances;
- A description of the work rule, policy or instruction at issue and steps the company took to inform the employee of such information and to counsel them to improve (provide copy of policy if written);
- A description of the triggering event for termination and its results; and,
- A statement as to the impact of the employee's actions on the company's operations, business, or other employees

# Employer Response - Timeliness

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- It is imperative that you timely provide information
- If a response is tardy, the state agency:
  - May not let the company appeal an eligibility determination; or
  - May raise the company's unemployment tax rate



# Reasons an Employer Will Fight

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- Strong case for showing the employee's misconduct resulted in termination (e.g., former employee stole from the company or otherwise harmed the company's business).
- Employee was terminated for violating a company's workplace violence policy or for otherwise creating a safety concern.
- Strong and consistent documentation about the lead up to termination and the termination event.



# Reasons an Employer May Not Fight a Claim

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- Company lacks documentation or other support for the termination reason (e.g., Martha and Ted).
- Employee has raised other workplace claims Risk upsetting the terminated employee and encouraging them to retain counsel or file another action.
- Consider impact of an administrative hearing if former employee has already retained counsel or threatens litigation.



# The Appeals Process

# When Unhappy... File an Appeal!

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- Employees often file appeals when denied unemployment benefits
- In Georgia, the first level of appeal is typically a telephonic administrative hearing.
- A notice of appeal must be filed within **15** days of the date benefits were awarded.
- Most hearings are held within 2-3 weeks of the date the notice of appeal is received.
- The hearing (generally) lasts for one hour and is recorded.



# The Appeals Process

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- Either party may bring in witnesses for testimony and present relevant documents.
- Each witness must testify under oath.
- The employer presents evidence first.
  - Pre-hearing – identify key witnesses and gather documents.
  - Pre-hearing – prepare witnesses so they can testify to the reasons for termination and how that employee is ineligible for unemployment benefits.
  - Get in house or outside counsel involved for witness preparation especially if other claims are threatened or pending

# The Appeals Process, cont'd.

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- Once the employer presents its evidence, the former employee or their legal counsel may question the employer and present their own evidence
- An employer witness should answer the questions to the best of his/her ability.
- The employer has the right to have a Company representative on the line for all testimony. Exercise that right!

# Managing Unemployment Compensation Costs

# The Real Cost of Unemployment Claims

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- Increased unemployment tax rates
- Experience ratings - Each claim assessed to an employer's account may result in a tax rate increase in future years.



# Managing Costs

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- Challenge and win claims when a former employee should be deemed ineligible for benefits.
- Take proactive measures like only hiring workers who are needed and qualified – this prevents layoffs and situations where employee is not a good fit.
- Provide employees the opportunity to turn around their job performance by carefully documenting performance concerns and providing specific, actionable feedback.
- Outsource unemployment claims to a third party to save a resource more valuable than money – time.

# COVID – 19 Benefits Update

# Georgia and The Federal American Rescue Plan

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- Effective **June 26, 2021**, Georgia will no longer participate in the four federal Pandemic assistance plans. This means Georgia:
  - no longer will provide additional \$300 in weekly unemployment benefits;
  - no longer will permit persons who ordinarily would not qualify for unemployment to obtain benefits (i.e., self-employed, gig workers, part-time employees);
  - no longer will extension of benefits once regular benefits are exhausted; and
  - no longer will pay \$100 in additional benefits for people with mixed earnings.

# Questions?



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