

PBPA Podcast Transcript
Responding to Unemployment Claims
(20:38 minutes)



Sireesha ([00:03](#)):

Unemployment compensation is designed to provide temporary income support for workers who lose their jobs through no fault of their own. What should your nonprofit organization do if and when it receives an unemployment claim? First tip, open up that notice quickly! From there, well, that's what we will be discussing today with Wayne Cartwright. In today's episode of the PBPA Podcast, Wayne will answer our questions about unemployment claims from: what information should be provided to the Department of Labor, to navigating unfounded claims, to deciding whether to seek an appeal. Join us in today's episode as we delve into legal considerations and best practices for responding to unemployment claims.

Sireesha ([00:59](#)):

Hello and welcome to the PBPA Podcast. In each episode of the PBPA Podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at pbpatl.org. Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel, contact your attorney for guidance on your nonprofits' specific situation

Sireesha ([02:08](#)):

Wayne Cartwright is a skilled attorney with an expertise in complex commercial litigation and employment law. He's an associate with the law firm Hall, Gilligan Roberts, and Han Lever in Atlanta. We're thrilled to have him here today to share his insights and guidance for nonprofit employers navigating unemployment claims. Thanks so much for being here, Wayne.

Wayne ([02:30](#)):

Thank you for letting me be on the podcast. I'm very happy to talk about it. Very big fan of everything you guys do, and think this is a useful topic to a lot of people in understanding how to try to navigate this question that we don't ever want to answer.

Sireesha ([02:46](#)):

Exactly right. And Wayne, we appreciate those kind words and we appreciate volunteers like you being available to share their expertise and insight with our nonprofit listeners. And to start off with, Wayne, it's so important for an employer to actually respond to an unemployment claim. What is the first step an employer should take if they receive an unemployment claim?

Wayne ([03:13](#)):

So, I, I think you got it right. Open the mail. That's always the number one thing. And you wanna open it quickly. 'cause The timeline is pretty short if you're going to dispute it. You only have 15 days after the

letter is mailed to dispute it. And the first thing is to just question whether or not it's valid. Who you terminated and whether or not you terminated them because of misconduct or because they quit and they left, they abandoned their job. Or if they got terminated 'cause there was a layoff or something like that was going on. And so that's the first question is do we need to challenge this? Is there basis to challenge it?

Sireesha ([03:54](#)):

I mean, I feel like unemployment is a bit mysterious. Some employers may not pay attention when they receive that claim because they don't really understand it. And nonprofit employers have even more options available to them for paying into unemployment, and that can make it even more mysterious. So let's talk about some of the unique options for nonprofit employers. For example, sometimes a nonprofit employer is not even required to pay unemployment insurance in Georgia?

Wayne ([04:25](#)):

Yeah, that is correct. Especially if they're a small nonprofit. So that's for people or less, then they're not required. There's also an option if you're a 501(c)3 nonprofit, where instead of paying insurance, typically the way you do, which is you pay in advance based on a pretty complicated schedule of past job ratings, meaning how many people end up asking for unemployment claims. You get assigned an amount that you pay every quarter. But nonprofits are allowed instead of doing that to just refund what is actually spent. So that means that you only have to pay the amount that the state ends up paying in unemployment claims, which could be significantly less than what you would normally pay if you're a nonprofit who has very little job turnover. And so it can really change the dynamic. However, if you haven't been paying your insurance, the upfront cost of refunding, someone could make it more important that you really monitor these claims. Because instead of like an employer like say Walmart, you're not going to have already paid-in your taxes and it's not gonna change anything. It's going to be an actual bill that you'll receive in funding that person's unemployment benefits.

Sireesha ([05:44](#)):

And we do have some resources for any listeners who want to learn more about those options that Wayne referenced there that talk in more detail about the contributory versus reimbursable method. So I'll include a link for that, that on the episode page. But now, Wayne, going back to talking about claims. If an employer feels that an unemployment claim is not valid, if they believe the person claiming benefits doesn't have a right to unemployment, how should the employer proceed?

Wayne ([06:11](#)):

I mean, I think we should probably go over what exactly makes a claim disputable. Like when is a person eligible for unemployment and when are they ineligible? That's not a word. Uneligible <laugh>, when are they ineligible. And then once you make that determination, you can make the next step. So the first thing is understanding why you would be, why a person would be eligible. And so the list is pretty clear. To be eligible in Georgia, you've gotta be able to work available to work and actively seeking to work. And the reason for your termination has to have been no fault of your own, is basically the language on that. And what that means is that you couldn't have quit. If you vol-, if the person voluntarily quit, they're not eligible for unemployment, or if they're discharged for misconduct or violating a company policy, they're not eligible.

Wayne ([07:07](#)):

Or if you told someone “we can't have you do this job anymore, but here's a job that's slightly less what, not exactly what you were used to doing, but here is a job that you can work in” and they turn that down, then that would also be a situation in which they would not be eligible. So if someone was terminated under one of those situations, then that's somebody that you may want to dispute. Another time that it might make sense to dispute is if you're not the last employer. You suddenly get one of these claims and it's somebody that you terminated a year ago barring something going on weird with the mailing process, which is never completely unheard of <Laugh> in our, in our state recently. Most likely that person worked somewhere else between you and them, or that person has missed their timeline for initially seeking it.

Wayne ([07:59](#)):

So if one of those things come up, you need to consider disputing the claim and the process is pretty straightforward. You, it'll tell you on the notice that you get that a determination has been made and that they're going to provide benefits. And it'll tell you that within 15 days you've gotta reach out and send a letter to the board saying, Hey, we don't agree. There's something wrong. You've made a mistake, or there's been some misrepresentation or with additional facts, we think that you will find differently and not actually grant this person's unemployment claim. And so that's the first step is one, determining what the basis of for challenging it is, and then two, reaching out and letting them know. In that initial reach out. It doesn't need to be super detailed as to why you're challenging it. I would put something in there, but you don't need to worry about having all of your, all of your documents ready and attached to it. All that is going to do is open up for there to be a hearing on question, which will be the next step. But the first thing to do is figure out if there's a reason to challenge it, and then put together your challenge and send it in within those 15 days.

Sireesha ([09:10](#)):

So, tell me a little bit more about the hearing. Does a nonprofit need to hire an attorney for that?

Wayne ([09:17](#)):

No. It, it's not required. If there are questions going on that you think that it's related to something other than just unemployment, it may be a really good idea to hire an attorney. And by that I mean if the termination was tricky there may be issues of discrimination alleged or something like that. You'll be creating a record with the hearing. So it, in that situation, you may really want to consider your overall exposure risk beyond just the unemployment claim and whether it makes sense to have an attorney. But at the hearing, you're not required, the nonprofit's not required to be represented by attorney and the person seeking an unemployment claim. The former employer also isn't required to be represented. And usually these are telephone hearings. And by telephone I literally mean telephone, not fancy zoom hearings where you get to see people. It's old fashioned calling up a conference line number.

Wayne ([10:11](#)):

And it's an administrative judge. It's not your superior court judge. It's a, it's someone that usually is a lawyer, but all they do is hear these claims. And they usually last about 30 minutes, they can go a little bit longer before the hearing. You'll have notice. And sometimes those hearings can be set two or three months out from when you send in your initial response to the claim saying, Hey, we've got a dispute here. And so that's when, at the hearing, you'll want to put together all of your documents and lined up any person that you want to talk about it. The documents will usually be able to be shared directly by email with the hearing officer or the hearing officers' staff.

Wayne ([10:55](#)):

And then the hearing goes through kind of like a mini trial. There's usually like a little opening statements from each side. And then you get to present your evidence. And that evidence can be, Hey, look at these documents that we sent you here, it is clear where we're terminating this person because of X, Y, and Z. Or you can actually put up witnesses and have the employer's manager testify, we terminated Bob because Bob did X, Y, and Z. We had a talk with Bob on X date. He knew that he couldn't do it again or he'd get terminated and then he did it again. And so we don't know why Bob is seeking compensation.

Sireesha ([11:34](#)):

Got it. Okay. And then, so after the hearing, a determination can be made and if that determination is made in favor of the employee and the nonprofit doesn't agree with the decision, what should a nonprofit do at that point?

Wayne ([11:50](#)):

So at that point you can appeal, again, it's the tribunal hearing appeal. And that one you will basically just say "we don't agree with this". You don't get to really supplement the record. And it goes to three hearing officers, essentially who will hear it, and they'll make a final determination based on the record that you guys produced during that hearing. There won't be a separate hearing for this appeal. And those are usually a little bit quicker turnaround. And then you get the hearing there, and then if you still disagree with it, then you can appeal. But that appellate process leads you into the superior court. At which point I would definitely recommend getting an attorney, but I'd also recommend really considering the amount of time and energy that you're putting into this claim, because you're probably going to be running up against the total cost related to what the claim is gonna be worth at that point.

Wayne ([12:45](#)):

Unfortunately, that's not to say that you shouldn't bring up it, it may not be worth it. Right. Especially if you're one of these nonprofits that's doing the reimbursement instead of non-contributory. There are precedent setting reasons to challenge a unemployment claim that is false. Like we will challenge these and we will fight them all the way 'cause we have to pay the compensation regardless. And so it may be worth it to the nonprofit in that situation to pursue it all the way through, even if that means going to a superior court. If that's true though, I'd also say that you might want to think about getting an attorney involved earlier in the process. Of all our faults, one of the things we tend to be pretty good about is creating a record. And that's really where what you'll wanna be doing in these early stages is creating as clear and as clean of record to be as persuasive as possible.

Sireesha ([13:36](#)):

That's a great overview, Wayne, of what that appeals process looks like and the pros and cons of it. I do want to also mention to our listeners that we have an article that I'll include on the page for this episode, which details those steps in the appeals process that Wayne referenced. And quick question, Wayne: Employers, if they appeal, is it often that they're successful?

Wayne ([14:00](#)):

No. <laugh> To, to be honest with you, the system is set up to try and prov- I mean, the whole structure of the unemployment claim system is set up to try and to provide some assistance to someone who has just lost their job. And so there are no, there's no precedent. That means there's no requirement that

the judges be more lenient to the employees. But from my personal experience, which has been several of these claims, they tend to give the benefit of the doubt to the employee. And part of that's because in the nonprofit world going back to Walmart, not nothing against them, but their turnover isn't really affected by one person's claim. The person who gets hit paying for that isn't really Walmart, they're gonna have to pay the same whether that person recovers claims or not.

Wayne ([14:49](#)):

And so the hearing officers tend to know that. And so they, they tend to think, hey, this is a limited amount of money that we're providing to someone who doesn't have a job. And so it tends to be that way. Now that's not to say that there aren't cases, and sometimes you do win. I recently won one involving an executive who had left. And for reasons of principle and things, the client wanted to challenge it until it got done.. And if there is clear evidence that they're not entitled to it, then you, you certainly can win. But I would say that if it's in the gray area of did we terminate that person because we knew that they had violated a policy or did we tell them "Hey, this just isn't working out and it's not a good fit?" If that's the fact pattern that you're working with, it's probably the good fit person. The not good fit person's going to end up being able to recoup compensation more likely than not.

Sireesha ([15:49](#)):

That's kinda leads me to my last question, Wayne, do you have any suggestions or tips to help employers reduce the risk of receiving unemployment claims?

Wayne ([16:01](#)):

The biggest tip is, it's kind of counterintuitive to how we as society operate, but be brutally honest with the people that you're terminating. The biggest issue that I see with clients and these types of things is someone who is being terminated because they're a bad employee, someone who is not following the rules, but the termination went down similar to what I alluded to earlier, which is "we really don't think this is a good fit with us". We appreciate it. And it comes from a very sincere place of wanting to be nice to the person that you're terminating. Nobody wants to fire someone. And while you're firing them, also tell them how bad they are. And that's not the goal here. I'm not suggesting that that's what people should do when they're firing someone.

Wayne ([16:48](#)):

But when you're terminating someone, you wanna be very clear with them, what the reason is that you're terminating them for, and if that reason is truly that they've been a bad employee, you need to be clear with that. You need to be clear with that in writing, ideally, put it out there, put it very succinct and clear. Don't need to pile on, don't need to suggest anything mean about it. It's just that being clear and being very consistent with the expectations that you have for someone will help you a lot in this area. Because if they have a termination notice that says you were terminated because you violated our hardiness policy, 'cause you were constantly late, they're gonna have a very hard time saying that they were terminated, that they got that the termination was not because of their own fault, that it was a no cause termination. Because there's gonna be a piece of paper that says it was this. And so that's really just one of those things where it's kind of counterintuitive to being a human, is what I tell clients. You just gotta, don't be the nice guy there. Be the honest person. And it helps both sides in the end. I mean, also if someone's getting fired because they're not following rules, they should know that. So in their next employment, they will maybe follow those rules.

Sireesha ([18:03](#)):

And Wayne, I'm gonna kind of reiterate what you just said because I think nonprofit employers with their big hearts can be guilty of that, where they, where they wanna be nice, but like you said, important to be brutally honest. And while nonprofit employers are trying to look out for their employees, they also need to look out for their organization. And this is one of those situations where, as you said, make clear when you do that separation of notice, write clearly what the reason for separation is.

Wayne ([18:33](#)):

And like I say it is a, it is counterintuitive to how we go round. You know, if my wife asks me "was dinner great?", my answer is always going to be "yes!". But I don't then have to defend that to a court later or to a tribunal. And so when you put on that HR hat and when you are having that communication you've gotta remember that like you said, you're protecting your organization and in the end, everyone is better off by complete and total honesty. Even if it is a little painful in the situation right there. And this applies beyond unemployment claims. This will also help you with other types of claims, discrimination types, claims and things like that. That's usually the biggest area of where there was miscommunication and a person trying to be nice to the person who is getting terminated, leads to misunderstanding and allegations that the real reason was something else other than what it actually was.

Sireesha ([19:34](#)):

Wayne, this is all such great information. With this clear and practical guidance, our nonprofit listeners should be ready to deal with almost any unemployment claim they receive. Thank you, Wayne, for sharing your time and expertise with us.

Wayne ([19:50](#)):

Yes, and thank you for having me on. It was a great time and hopefully we've helped some people out.

Sireesha ([19:56](#)):

We hope that you found this episode of the PBPA Podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.