

Employee Policies Instant Handbook

Comprehensive, Employee Friendly, Fast & Easy

PITFALLS TO AVOID

What Most Employers Don't Know About Controlling Your Unemployment Taxes

Very few people really understand how the unemployment tax system works, who pays for it, and who is entitled to benefits. Many employees have the mistaken impression that unemployment taxes have been withheld from their paycheck, that they have paid for the system, and that they are entitled to be paid from it whenever they are not working, for whatever reason. This is not the case.

The system is **funded 100% by the employer**. Nothing is withheld from the employee's paycheck, and employees are only entitled to benefits when they have been laid off from work through no fault of their own. People are **not entitled** to be paid when they choose not to work or when they have failed to perform according to reasonable expectations and standards of their employer.

It is essential for business owners to understand that you, the employer, bear the entire cost of the unemployment system, the cost is substantial, and great savings can be realized if you can reduce your own unemployment tax rate. In some states, for example, the difference between the minimum and maximum unemployment tax rate is over \$500 per year per employee! Even if you have only two employees, you are looking at a difference of over a thousand dollars per year. If you have 10 employees, your potential savings are over five thousand dollars a year!!

What most small business owners fail to understand is that your tax rates are, to a great extent, under your control.

While the exact formula used to calculate your tax rate varies from state to state, the following general principle always applies.

Your tax rate is based on the dollar amount of benefits that have been paid out to your former employees.

The more claims that are successfully filed against you, the higher your tax rate will be.

However, as an employer, you are not helpless to just sit back and let these claims be charged against your account. There are certain essential things you can do to protect your rights as an employer.

**Employees are not entitled to benefits if they...
Are fired for good, work-related cause
or...Quit without good, work-related cause.**

If you receive a claim form for an employee who is not entitled to benefits, you must contest the claim. Otherwise, this claim will be paid and charged against your account. If you contest the claim, your State Employment Commission will conduct a hearing where you will be called upon to produce documentation and testimony that proves your side of the case. This is where you must “get your act together” in advance.

**Written policies and good documentation are your best
defense against unemployment claims.**

If you have fired an employee for cause, you must be prepared to show documentation that proves that your policies and expectations were clearly communicated to the employee and that the employee agreed to them but failed to live up to them. You must also have the proper systems in place to **document** unsatisfactory performance. If you can produce documentation (and sometimes witnesses) to prove you had good cause to fire a worker, you can prevent this claim being paid and charged against your account.

Likewise, with proper documentation, you can successfully contest a claim filed by an employee who quits. You will need to demonstrate that they did not have good cause to quit. If an employee agrees to certain conditions when hired, then later becomes dissatisfied, this is not considered good cause. You can successfully deny a claim for benefits – if you can prove that the conditions were explained to the employee and the employee agreed to them. The only way to prove this is to have your **policies in writing** and have the employee agree to them, in writing.

You should also have in place some form of grievance procedure or “open door” policy that gives employees a way to communicate to management any complaints about what they believe to be unfair or improper working conditions. If an employee is dissatisfied, it is his/her responsibility to communicate this to management and give management a chance to correct the conditions.

You should understand your rights as an employer and protect them. You should make it your policy to **read and respond to every form you receive** regarding

former employees' claims. If you do not believe the claimant should be entitled to benefits, you must contest the claim by returning the form before the deadline indicated. Otherwise, this claim will be paid and charged against your account.

Keep in mind that you are entitled to fire an employee for cause without having to pay unemployment benefits. However, good documentation of your counseling and warnings will be essential. You will probably be required to prove that you gave the employee at least two prior warnings before firing, including a "final warning" that he/she would be fired if performance did not improve. You must document these warnings in the employee's file.

If you go to a hearing to contest a claim for unemployment, you should not only bring all your documentation, you should also send the manager or supervisor who can testify **first hand** to the incidents, performance problems, and communications in question. Second or third hand testimony often carries very little weight in a hearing.

Strangely enough, you must **avoid saying** that the employee was **unable** to perform the job. This makes it look like you just made a bad hiring decision. You should be prepared to point out that the employee had the qualifications to do the job but did not choose to do what was asked.

Take the proper steps now to protect yourself. Unemployment taxes are a constant drain on your profits – and a lawsuit could bankrupt you!! Get all the information you can from your own State Employment Commission as to exactly how the system works in your state. Put your policies in writing and train your managers to follow them **before** you have a problem. It can save you thousands of dollars in the long run!

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