



Understanding Unemployment Insurance

*By
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Understanding Unemployment Insurance

- What are the policy goals of Unemployment Insurance?
 - Goal: provide temporary financial help to people who become unemployed through **no fault of their own**
 - Goal: encourage employers to provide more stable employment
 - See NMSA 1978, § 51-1-3 “Declaration of state public policy”

Who pays for UI?

- Unemployment Insurance is funded by **employer** contributions & payments
- Claimants do not pay into the system

Who Can Get Unemployment Insurance?

- There are two types of eligibility requirements
 - Monetary eligibility
 - Non-monetary eligibility

Monetary Eligibility

- Has the person **earned enough money** or have enough of a **work history** to be able to make a claim?
- What amount of benefits can the claimant collect?

Base Period

- Must have earned covered wages \geq \$1,871.03 in one quarter and \$1 in any other quarter

Oct Nov Dec	Jan Feb Mar	April May June	July Aug Sept	Lag quarter Oct Nov Dec	Jan Feb Mar	If your claim is filed in:		
	Jan Feb Mar	Apr May June	July Aug Sept	Oct Nov Dec	Lag quarter Jan Feb Mar	April May June		
		Apr May June	July Aug Sept	Oct Nov Dec	Jan Feb Mar	Lag quarter April May June	July Aug Sept	
Prior Year			July Aug Sept	Oct Nov Dec	Jan Feb Mar	April May June	Lag quarter July Aug Sept	
	Last Year				Current Year			

Non-monetary eligibility:

- How did the person separate from his or her last employment?
- Is the person attached to the labor market?

Non-monetary eligibility

- Non-monetary issues, 2 types:
 - Non-separation
 - Separation

Non-monetary eligibility

- Non-separation issue types:
 - Able
 - Available
 - Actively seeking work

Non-monetary eligibility

- Most non-separation issues do not involve employers.
 - Exception: when an employee refuses an offer of **suitable work** without good cause. See NMSA 1978, § 51-1-7(B) (explaining factors for determining whether an offer of work is suitable)

Understanding Unemployment Insurance

- Separation issue types:
 - Voluntary leaving/quit
 - Discharge/firing

Voluntary leavings/quits

- New Mexico Statute 51-1-7(A)(1)
 - An individual shall be disqualified for and shall not be eligible to receive benefits if it is determined by the division that the individual left employment voluntarily without **good cause in connection with the employment.**

Voluntary Leavings/quits

- What is considered good cause connected with the work?
- “Good cause is established when an individual faces compelling and necessitous circumstances of such magnitude that there is no alternative to leaving gainful employment.” *Molenda v. Thomsen*, 1989-NMSC-022, 108 N.M. 380, 381, 772 P.2d 1303, 1304
 - Examples:
 - Sexual harassment
 - Verbal abuse
 - Hazardous working conditions
 - Repeated non-payment of wages when due
 - Elimination of benefits

Voluntary leavings/quits

- Reasons that are NOT considered good cause connected with the work
 - Personal or Domestic reasons
 - Leaving to care for sick relatives
 - Leaving to accompany a spouse to a different geographic location (except military spouses)
 - Leaving because of lack of childcare
 - Leaving to go to school
 - Leaving due to lack of transportation
- See, e.g., Begay v. N.M. Emp't Sec. Dep't*, 100 N.M. 529, 531, 673 P.2d 509, 508 (1983)

Voluntary Leavings/Quits

- In order for claimants to establish good cause for leaving their employment, they must show that they have made **reasonable efforts** to preserve their employment by pursuing available opportunities to resolve their problems or grievances with their employer. *See Molenda v. Thomsen, 1989-NMSC-022, 108 N.M. at 381, 772 P.2d at 1304*
 - Must follow grievance procedures if applicable
 - Must notify management of concerns
 - Must give management reasonable opportunities to resolve issues

Exceptions to Good Cause Requirement

- Claimants will not be denied benefits even though they quit if they quit:
 - Because of domestic abuse – claimant must have documentation; or
 - Military spouses
 - These benefits (for domestic abuse and military spouse separations) are not charged directly to an employer but they hit the Trust Fund
- See NMSA 1978, § 51-1-7(A)(1)(b)-(c); § 51-1-11(C)(1)-(2)*

Discharges/Firings

- New Mexico Statute 51-1-7(A)(2)
 - An individual shall be disqualified for and shall not be eligible to receive benefits if it is determined by the division that the individual has been discharged for **misconduct** connected with the individual's employment.

Discharges/Firings

● What is misconduct?

- Any kind of willful or deliberate behavior which is harmful to the employer's legitimate business interests. The employee must know that the behavior could result in termination. In most cases, the conduct must occur on the job or on the employer's premises

● Examples of misconduct:

- Repeated absences or tardiness after being warned
- Willful violation of company policies without good reason or excuse
- Insubordination
- Stealing
- Dishonesty or falsification of records, such as timesheets
- Fighting on the job
- Rudeness to customers after being warned
- Repeated cash shortages after being warned
- Intoxication on the job

Discharges/Firings

● What is NOT misconduct?

- Mere inefficient or unsatisfactory job performance, inability to perform to the employer's standards, and isolated instances of carelessness or ordinary negligence do not constitute misconduct.
- In order for poor job performance to be considered misconduct, the employer must be able to provide that the employee was fully capable of performing the job to the employer's standards and expectations. The most frequent way of providing this is by showing that the employee has a prior track record of performing his or her job at or above standards and then later on stopping performing satisfactorily.

Discharges/Firings

● Discharge vs. Voluntary Leaving

- Whether a claimant quit or was discharged is critical because:
 - In discharge cases, the employer has the burden of proving that a claimant should be disqualified.
 - In voluntary quit cases, the claimant has the burden of proving good cause.
- *See, e.g., Fitzhugh v. New Mexico Department of Labor*, 122 N.M. 173, 181, 922 P.2d 555, 563 (1996) (“Among the most important considerations in resolving whether an employee quit or was fired is an examination of the subjective intentions and understandings of that employee.”).
- The ultimate question is: Who was the moving party?

Company Policies and Procedures

- A UI claim's outcome is usually determined before the claim is ever filed
- Any employer's policies and day-to-day personnel practices will determine the employer's success in disputing UI claims
 - Employers should put their employees on **written** notice of expectations
 - Employers should uniformly and fairly enforce their policies
 - Employer's should avoid making emotional decisions

Company Policies and Procedures Cont'd

● Misconduct vs. Poor Performance

- Poor performance is not grounds for denial of benefits
- In evaluating and disciplining employees, employers should focus on performance of specific duties and tasks
- If an employee is on notice that a particular behavior violates the employer's interests and continues to engage in that behavior, then misconduct can be established
- Potential misconduct: Failure to meet objective productivity measures after a warning, failure to be at work station after a warning, repeating the same mistake after a warning

Special Problems with Medical Departures and Absences

Scenarios

- **Scenario 1:** Worker develops a serious non-work-related illness and takes a leave of absence. Employer advises worker that if she does not return by a specified date, she will be deemed to have quit and will be replaced. Worker is unable to obtain medical clearance to perform any work and therefore fails to return to work. Employer terminates her employment. Is this worker eligible for benefits?

Scenario 1 cont'd

● Analysis:

- Two major issues:
 - Is claimant able to work?
 - How did the separation occur?
- Under the facts of scenario 1, claimant does not appear to be able to work. She therefore cannot fulfill a threshold requirement to collect benefits. Her separation is therefore not relevant.

Scenarios

- **Scenario 2:** Worker develops a serious non-work-related illness and takes a leave of absence. Employer advises worker that if she does not return by a specified date, she will be deemed to have quit and will be replaced. Worker is unable to obtain medical clearance to perform any work by the deadline. Employer terminates her employment. Subsequently, claimant is medically cleared for light duty. Is this worker eligible for benefits?

Scenario 2 cont'd

● Analysis:

- Is claimant able to work? **Yes. She was medically cleared for light duty.**
- What were the circumstances of the separation?
 - Did claimant subjectively desire to terminate the employer-employee relationship? **No. Employer gave her a deadline that she could not meet because of medical circumstances.**
 - **Because employer was the moving parting, claimant is presumptively eligible unless misconduct is shown.**
 - **A non-work-related health problem is not misconduct.**
 - **Claimant is therefore eligible for benefits if she meets all other conditions.**

Scenarios

- **Scenario 3:** Worker develops a serious non-work-related illness and takes a leave of absence. Employer advises worker that if she does not return by a specified date, she will be deemed to have quit and will be replaced. Employer also states that claimant may return to an equivalent position whenever she receives clearance to do so. Worker is unable to obtain medical clearance to perform any work by the deadline. Employer terminates her employment. Subsequently, claimant is medically cleared to return to work but chooses to apply for benefits instead. Is this worker eligible for benefits?

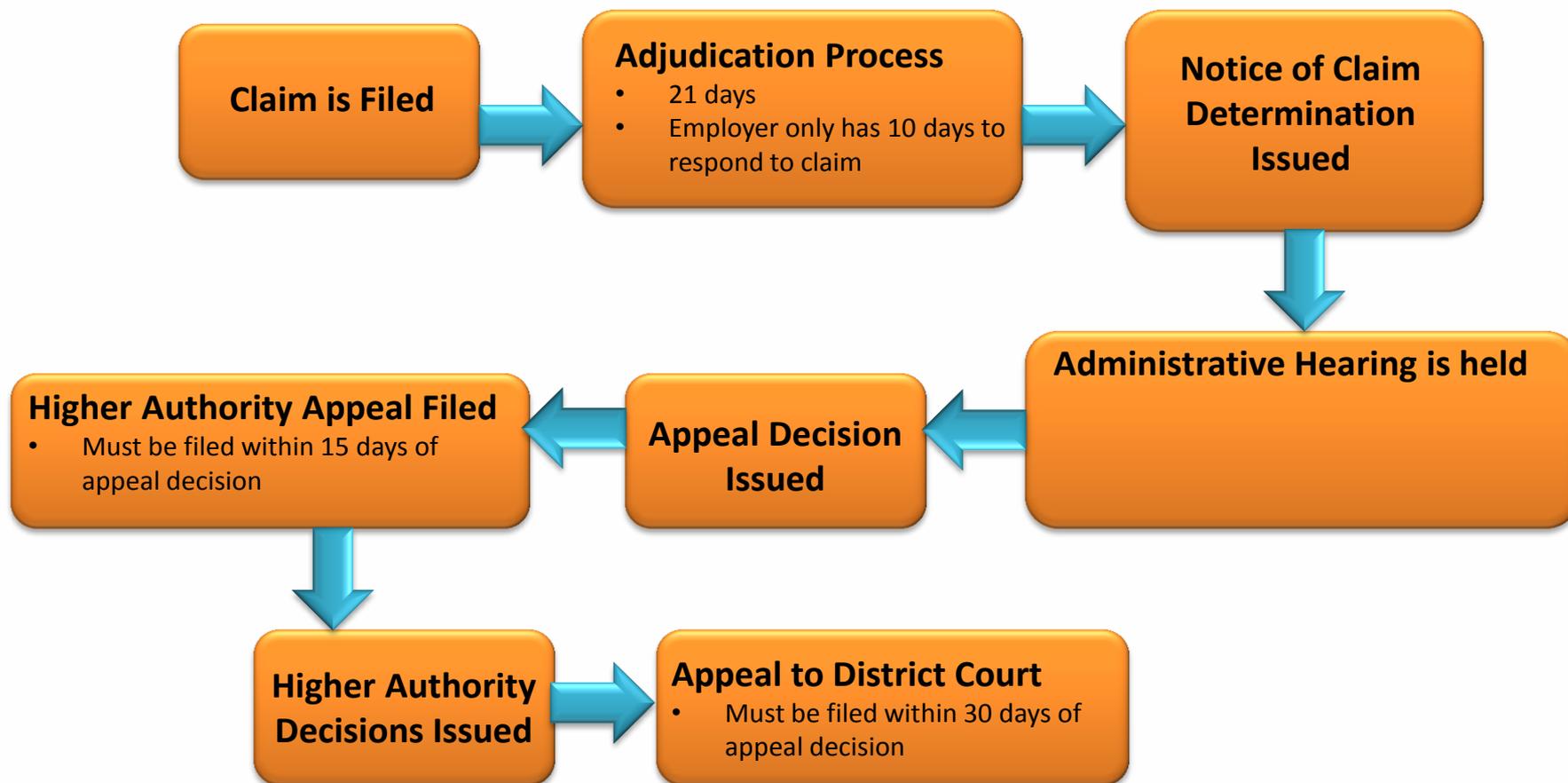
Scenario 3 cont'd

● Analysis:

- Is claimant able to work? **Yes. She was medically cleared for light duty.**
- What were the circumstances of the separation?
 - Did employer subjectively desire to terminate the employer-employee relationship? **No. Employer gave her a deadline but also advised her that she could return to an equivalent position whenever she was cleared for work.**
 - On these facts, it appears more likely that claimant was the moving party because she chose not to return when she was told she would have a position waiting for her.
 - Because claimant was the moving party, she voluntarily quit and is therefore presumptively ineligible unless she had good cause connected with the work.
 - A non-work-related medical issue does not constitute good cause connected with the work. She is therefore not eligible for benefits.

Unemployment Insurance Appeals

Unemployment Insurance Appeals Process



Unemployment Insurance Appeals Process

- What is the difference between lower and higher authority appeals?

Appeals Tribunal

- This is the lower authority
- First Level of appeal
- An appeal hearing is held

Secretary/ Board Of Review

- This is the higher authority
- Second Level of appeal
- No hearing is held; “record review”

Unemployment Insurance Appeals Process

- What is an appeal hearing?
 - Opportunity to present your case
 - Informal legal proceedings with claimant and employer
 - Before an administrative law judge (ALJ)
 - Testimony is given under oath
 - Evidence (e.g., documents) can be presented
 - Each side can confront and cross-examine the other
 - A record is created
 - Hearing Procedures set forth at NMAC 11.3.500

Unemployment Insurance Appeals Process

● Call-in Procedure

- Parties to appeals must call in to the Tribunal to confirm participation by 4:00 p.m. on the business day before the scheduled hearing
- Parties may call in any time after receiving the notice of hearing

Unemployment Insurance Appeals Process

● Evidence:

- Residuum rule applies to unemployment decisions. *Trujillo v. Employment Sec. Commission of NM*, 94 N.M. 343, 610 P.2d 747 (1980). The rule prohibits the denial of benefits or the disqualification of claimants on the basis of controverted hearsay evidence alone.
- A reviewing court will not uphold an agency ruling if the ruling is based solely on evidence that would be inadmissible in a trial court setting.

Unemployment Insurance Appeals Process

- **Documentary Evidence:** Parties wishing to use documents must disclose those documents to the Appeal Tribunal and to any opposing parties 48 hours before the hearing.
- **Subpoenas (NMAC 11.3.500.9(F)):**
 - At the discretion of the Tribunal
 - Any party may make a written application for subpoena
 - A subpoenaed party may move to quash or for a protective order

Excusing missed deadlines

- Failures to act timely are excused only where there is good cause. NMAC 11.3.300.7(L) *and* NMAC 11. 3.500.7.(D).
- “Good cause” means a substantial reason, one that affords a legal excuse, a legally sufficient ground or reason. In determining whether good cause has been shown for permitting an untimely action or excusing the failure to act as required, the department may consider any relevant factors including, but not limited to:
 - whether the party acted in the manner that a reasonably prudent individual would have acted under the same or similar circumstances,
 - whether the party received timely notice of the need to act,
 - whether there was administrative error by the department,
 - whether there were factors outside the control of the party that prevented a timely action,
 - the efforts made by the party to seek an extension of time by promptly notifying the department,
 - the party’s physical inability to take timely action,
 - the length of time the action was untimely, and
 - whether any other interested party has been prejudiced by the untimely action.



Thank You!

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