

EMPLOYMENT LAW SUMMARY

Florida Unemployment Compensation - Employee Eligibility



Because You're Different

Under Florida's unemployment insurance program, individuals who have lost their jobs may be eligible for benefits that will partially replace their lost wages. The Florida Unemployment Compensation Law (UCL) sets eligibility requirements for individuals who claim unemployment benefits. The [Florida Department of Economic Opportunity](#) (DEO) reviews individual qualifications for unemployment compensation.

ELIGIBILITY TO RECEIVE BENEFITS

Individuals who have been unemployed for one week may apply for unemployment compensation. To qualify for benefits, individuals must:

- Certify they are able and available to work;
- Show they are actively searching for work or engaging in systematic and sustained efforts to find work such as contacting at least five prospective employers for each week of unemployment claimed;
- Have earned an amount of wages equal to at least three times the amount of benefits claimed during the calendar year in which they apply for compensation;
- Participate in an initial skills review;
- Participate in reemployment services if the DEO determines that it is likely that they will exhaust regular benefits before finding employment;
- Provide the DEO with a valid social security number;
- Register with the DEO for work and report to a one-stop career center (not a requirement for non-residents, individuals subject to a temporary layoff, individuals who customarily receive employment through a union hiring hall or individuals who claim benefits under an approved short-time plan); and
- Report to the DEO the name, address, and telephone number of each prospective employer that they contacted or the date on which they visited a one-stop career center for each week of benefits claimed.

The DEO will not deny benefits to individuals who are participating in an approved training program, who leave unsuitable employment or who fail to look for suitable work because they have fulfilled their jury duty obligations.

If all other eligibility requirements are met, aliens lawfully admitted for permanent residence in the United States are eligible to receive benefits. When receiving an application from foreign citizens, the DEO will uniformly require them to provide the information necessary to determine their residency status.

DISQUALIFICATION

Individuals who meet the UCL's eligibility requirements may still be disqualified or suspended from receiving unemployment benefits. Disqualification may prevent an individual from collecting benefits for specified periods or from collecting the full amount of regular benefits.

ATHLETES

Individuals training or preparing to participate in athletic or sporting events may not receive unemployment benefits during off-season periods. This restriction applies for individuals who have performed during the previous season and for whom there is a reasonable expectation that they will participate during the next season.

EDUCATIONAL INSTITUTION EMPLOYEES

Unemployment benefits are not available to educational institution employees during the break period between two regular terms or during sabbatical leave. This restriction applies to individuals who have performed services during the term immediately preceding the break and for whom there is a reasonable expectation that they will come back for the following term.

REFUSING TO SEEK WORK

Individuals may also be disqualified from receiving unemployment benefits if they fail to apply for or fail to accept suitable work. In general, suitable work is employment of a substantially equal or higher skill level when compared to an employee's previous occupation. In addition, suitable employment must pay at least 80 percent of the employee's previous wages.

However, if an individual has received 25 weeks of unemployment benefits, suitable employment must also provide wages above the minimum wage rate and at least 20 percent more than the weekly benefit amount the individual received from the UC Fund.

It is up to the DEO to determine whether an individual has refused to accept suitable work. In making this decision, the DEO will consider:

- The duration of an individual's unemployment;
- The proposed rate of pay;
- The degree of health, safety or moral risk involved in the proposed employment;
- The individual's physical fitness, prior training, experience, prior earnings and prospect of finding employment in his or her customary occupation; and
- The distance the individual would have to commute from his or her residence to the proposed place of employment.

An individual is not considered to have failed to accept suitable work when he or she refuses a position that:

- Is vacant because of a strike;
- Offers wages, working hours or working conditions that are substantially less favorable than those prevailing for similar work in the locality; or
- Coerces individuals to join (or refrain from joining) a bona fide labor organization.

However, failing to secure a job because of a positive drug test is considered a failure to accept suitable work and disqualifies individuals from receiving benefits.

MISCONDUCT DISQUALIFICATION

Individuals discharged or suspended from work because of employment misconduct are not eligible to receive unemployment benefits. Employment misconduct is behavior that demonstrates a conscious disregard of an employer's interests or a deliberate violation of the reasonable standards of behavior an employer expects of its employees.

Carelessness or negligence may be considered misconduct if they are recurrent and manifest culpability or wrongful intent. The DEO, not the employer, determines what is and what is not employment misconduct.

When reviewing allegations of misconduct, the UCL requires the DEO to interpret the circumstances in the light most favorable to the employee. In addition, employees may be able to defend their behavior against accusations of misconduct if they can show that:

- They did not know (or could not reasonably know) of the rule or policy they violated;
- The violation was not reasonably related to the job environment and performance; or
- The rule was not fairly or consistently enforced.

ILLEGAL ACTIVITIES AND IMPRISONMENT

Individuals who are terminated because of or who seek to obtain unemployment benefits through illegal activities connected to their employment are disqualified from receiving unemployment compensation for 52 weeks. Illegal activities include fraud, illicit drug use and any other criminal activity for which the individual is found guilty or pleads "no contest" in a court of law.

If the alleged criminal activity is related to substance abuse, evidence of a positive, confirmed drug test must be provided. The test results and the chain of custody must be documented and maintained by a licensed and approved laboratory. To use the drug test, employers must first implement a drug-free workplace program and must submit proof that the program:

- Qualifies for the insurance discounts provided under state law; or
- Is in compliance with federal drug-testing (or stricter) standards.

In addition, individuals may not receive unemployment benefits while they are incarcerated.

VOLUNTARY SEPARATION

Unemployment benefits are available only to individuals who have involuntarily lost their employment. Voluntary separation from employment disqualifies individuals from receiving benefits. Voluntary separation includes failing to contact a temporary agency to receive a reassignment after completing a temporary job (if the agency notified the employee that he or she has to either report for reassignment or forfeit future unemployment benefits). Voluntary separation also includes a leave of absence initiated by the employee.

However, the UCL makes an exception for individuals who leave their employment for good cause. Under the law, good cause is a compelling reason that would drive an employee to cease working, such as sickness, disability or relocation in connection with a spouse's military change of station or orders of deployment.

LABOR DISPUTES

Individuals are disqualified from receiving unemployment benefits if their unemployment is due to a labor dispute that is active or in progress at the individual's place of employment. For this restriction to apply, the affected individuals must participate, finance or have a direct interest in the labor dispute. Under the UCL, paying regular union dues does not qualify as financing a labor dispute.

Individuals who cannot report to work because of an employer lockout may be eligible for unemployment benefits as long as the employer's lockout is not in response to threats, actions or other activities that would lead the employer to perceive impending damage to property or a substantial reduction in production due to its employees' actions.

RECEIVING ALTERNATIVE BENEFITS

Individuals receiving or seeking benefits from an alternative source, such as another state or the federal government, are ineligible to receive unemployment compensation in Florida. However, if the other source determines that an individual is ineligible to receive compensation from them, that individual may become eligible to receive unemployment benefits in Florida. In addition, when alternative sources of income are less than an individual's unemployment benefits, the DEO may allow individuals to receive partial benefits. Alternative sources of income include:

- Wages in lieu of notice;
- Severance pay;
- Worker's compensation indemnity benefits;
- Unemployment benefits from another state or government; and
- Income from a retirement, pension or annuity program (including the Social Security Act).

APPEALS

Individuals, their former employers or any other party entitled to receive a notice of determination of benefits may appeal an adverse determination of eligibility within 20 days from the date when the DEO mails the notice. The DEO may accept a late filing if it finds good cause to not dismiss the appeal for tardiness.

The DEO will appoint one or more impartial and uninterested appeal referees to hear and make a decision on an appealed claim. An appeal referee has the authority to affirm, modify or reverse the initial determination and must mail a notice of hearing to all parties involved at least 10 days before the hearing. The UCL provides the rules that guide the appeal process.

The referee's decision is final unless a party initiates further review activities within 20 days after the date when the appeal referee sends notice of his or her decision to the parties' last known addresses.

Any party involved in the appeal process may request an additional appeal from the DEO if the referee modified or reversed the initial decision. The DEO may review the referee's decision or it may assign the matter to another referee. If the DEO denies reviewing a previous appeal, the referee's decision will be considered the DEO's decision. The DEO's decision may be reviewed by a district court of appeals.

PENALTIES

The DEO periodically investigates employer compliance with the UCL. Employers that fail to comply with UCL requirements, fail to cooperate with a DEO inspection or willfully refuse to pay any amount due may be guilty of a second-degree felony, punishable by imprisonment for up to 15 years and a fine of up to \$10,000. The penalty may increase for habitual offenders.

The DEO may also file criminal charges against individuals who knowingly provide incorrect statements, make false representations or fail to disclose a material fact to obtain, increase, decrease or prevent others from collecting unemployment benefits. Individuals found guilty of these charges commit a third degree felony punishable by up to five years of imprisonment (10 years for habitual or violent offenders) and a fine of up to \$5,000. Each incorrect statement, false representation or failure to disclose is considered a separate offense.

In addition, unpaid contributions and reimbursements are subject to a one percent interest charge per month until paid. The DEO may seek liens, injunctions, attachments and garnishments against an employer's real and personal property to enforce payment.

MORE INFORMATION

For more information on unemployment compensation laws in Florida, contact your Heffernan Insurance Brokers representative.

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. Readers should contact legal counsel for legal advice. © 2017-2020 Zywave, Inc. All rights reserved.