

## *Employer Advocates, LLC*



## Who Is Employer Advocates?

- Third-Party Unemployment Claims Specialists
  - Represent Employers throughout the Unemployment Claim and Appeal Hearing process
- Based in Salt Lake City, UT
- Founded in 1999
- Employer Advocates LLC represents School Districts, Hospitals, Counties, Tribal Governments, Colleges, Small Nonprofit entities and proprietary employers
- Processed over 140,000 claims

## Employer Advocates UI Services

- Claims Management
  - “Address of Record” with State Agency
  - Primary conduit between State Agency and nonprofit entity on all issues regarding Unemployment Insurance (e.g. Claims, Rebuttals, Initial Determinations, etc.)
- Appeals
  - Written Appeal / Hearing Request
  - Pre-Hearing Conference
  - Hearing Representation
  - Board of Review Appeals
- Audits
  - Quarterly Charges – Must Pull from Idaho Employer Portal
- Consultation
  - Pre-Termination UI impacts
  - Estimates of Potential Unemployment Liability

## The Cost of Unemployment?

- In 2019, the Maximum Idaho Claim is \$8,640 (\$432 x 20 weeks)
- Employer Advocates’ Reimbursing clients average Claim Cost \$4,377 in 2018
- Prevailing on Unemployment Claims Result in a Direct Savings to Reimbursing Employers because you directly “reimburse” the state agency for benefits paid to former workers.
  - Note: Reimbursing Finance Option for Unemployment Insurance is only available to Government Entities, Tribal Governments and 501 c 3 Non profits.

## Unemployment Charge Error Rates (Select States)

### UNITED STATES DEPARTMENT OF LABOR FY 2018 BENEFIT ACCURACY MEASUREMENT

| STATE                   | TOTAL UNEMPLOYMENT BENEFITS PAID | OVERPAYMENTS  | OVERPAID UNEMPLOYMENT BENEFITS |
|-------------------------|----------------------------------|---------------|--------------------------------|
| IDAHO                   | \$87,685,775                     | 15.36%        | \$13,467,264                   |
| LOUISIANA               | \$151,538,544                    | 10.38%        | \$15,721,685                   |
| NORTH CAROLINA          | \$184,737,824                    | 23.48%        | \$43,370,438                   |
| OREGON                  | \$472,055,984                    | 11.53%        | \$54,459,836                   |
| SOUTH CAROLINA          | \$156,591,169                    | 11.59%        | \$18,151,800                   |
| WASHINGTON              | \$881,213,889                    | 19.31%        | \$170,169,627                  |
| <b>NATIONAL AVERAGE</b> | <b>\$27,949,217,692</b>          | <b>12.54%</b> | <b>\$3,504,125,686</b>         |

Above information was extracted from the United States Department of Labor Benefit Accuracy Measurement Program (BAM)  
 BAM overpayments are for 7-1-2017 through 6-30-2018  
 BAM is a quality control statistical survey used to identify errors and support corrective action in the state unemployment insurance (UI) program.  
 Data includes improper payment percentages, total dollar amounts, and root cause by state.

## Program Results

### Summary of Unemployment Claims Activity

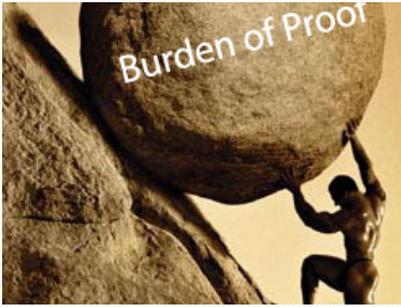
January 1, 2018 through December 31, 2018

#### Employer Advocates LLC - Reimbursing Employer Clients

| Number of Participating Employers | # of Claims Processed in 2018 | Win Rate on Protested Claims | Liability Removed/Suspended |
|-----------------------------------|-------------------------------|------------------------------|-----------------------------|
| 152                               | 1760                          | 84.04%                       | \$2,612,758.11              |



## Discharge Vs. Quit



- “Moving Party” has burden
- Who moved to end employment?
  - Quit = Former Employee
  - Discharge = Employer

## Staff Motivation



## Winning Discharge Cases

**Three Hurdles must be cleared: Knowledge, Culpability and Control**



## Unemployment Case Preparation:

How to Present the Information to Win

- Ensure that No Deadlines are Missed
  - Failure to Respond to Claims within 7 Days of Mailing / Posting of Claim
  - Failure to Respond to Requests for Additional Information within 48 Hours
  - Failure to Provide all Relevant Separation Information
- Identify a Final Incident of Misconduct (*Culpability*)
  - Final Incident must be on or near the date of termination
  - Misconduct must Cause Harm or Potential Harm to Business Interests
- Provide Evidence that Claimant *Knew* Misconduct Could Result in Discharge
- Show that Misconduct was within Employee's *Control*
  - If Employer Proves the Claimant Lacked the Skills or Ability to do the Job- the Employer will Lose.

## Knowledge

Document each step of the Employment Process



- Employee Handbook Receipt
- Training Rosters
- Counseling Notice (Warnings)
- Letter of Resignation
- Separation Notice

## Culpability



- Defined as “Harmful to Employer’s Interest”
  - Allowing employees to “get away with it this time” makes it more challenging to prove culpability.
  - Final Incident of misconduct must be in close proximity to termination.

## If we delay, they will pay! Suspend Pending Investigation



## How to Prove Control



- Employee must be in control of their actions and have the ability to make the changes required
- Provide proof that employee has been able to successfully do (or not do) the action causing the termination.
- Be very specific on the expectations

## Quit Separations

### Former Worker has Burden of Proof

- Make Note of *How* (text, email, letter of resignation, verbal notification) and *Why* the Former Employee notified you of the Quit.
- Keep Copy of the Resignation in the employee's file and Share with State agency if appropriate.
- If Worker Tried to Rescind the Notice of Quit – make a note as to why it was not allowed.
  - Position promised to another employee
  - Once Employer Notified of quit – Job assignments were revised to accommodate employee leaving.

## Appeal Hearings

### The Judge wants to investigate



- Reciting the results of *our* investigation will not suffice.
- Witnesses must have first-hand Testimony
- Hearsay Evidence Allowed but Given minimal Consideration

## Common Case Pitfalls



- Harassment Case – Don't Want Victims to Testify
- No Witnesses with First Hand Testimony
- No Specific Final Incident of Misconduct
- Former Employee Not Previously Warned about Behavior that Resulted in Discharge

## Isolated Incident of Misconduct

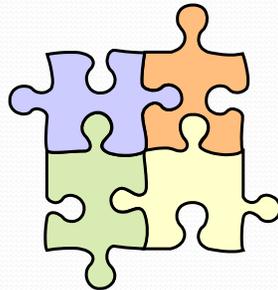


- No Prior Documented Issues of Related Infractions
- May be Viewed as a “Good Faith Error in Judgement”
- Pattern of Abuse is Difficult to prove if Offenses Vary
  - Example Tardiness and Yelling at Co-Worker

## Employer's Need Preponderance of Evidence in Discharge Cases (Former Employees Win All Ties in Unemployment insurance)



## Solving the Unemployment Insurance Puzzle



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