



Minnesota Unemployment Insurance Program
Cathy Peregrino – Employer Relations

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Minnesota Unemployment Insurance - agenda

- Worker status: independent contractors vs. employees
- Wages to report to UI
- Wage detail reporting methods
- Tax rate calculation
- Base tax rate
- Experience rating
- Managing your tax rate

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Why talk to employers?

Because you pay for the UI program:

- How do you do that?
 - By paying UI tax or reimbursing us for unemployment benefits paid
 - We'll soon explain this in detail
- We want to make sure you have all the information you need about how it works
- And we want to hear about it when you have issues

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About MN Unemployment Insurance (UI)

- UI provides a partial, temporary wage replacement “unemployment benefits” to workers who are unemployed due to no fault of their own.
- There are two parts to the UI program:
 - Payment of unemployment benefits
 - Collection of UI taxes
- Both are important, but the program exists to pay unemployment benefits to applicants.

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**Worker Status:
Independent Contractors vs. Employees**

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MN Unemployment Insurance (UI)

First on our agenda, your workers..

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**Worker Status:
Independent Contractors vs. Employees**

Are your workers employees or independent contractors?

- Many employers **misclassify** their workers as Independent Contractors. Expensive mistake!
- MN employers do better than most states (Good job!)
- Properly classify workers to avoid tax penalties and assessments
- Some industries more prone to misclassification (Construction)
- Be mindful of:
 - Consultants
 - Project managers
 - Advisors

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Why are workers misclassified?

Typically one of two reasons. Either the employer:

- Intentionally misclassified their worker(s) to avoid payroll taxes, Fair Labor Standards Act, Workers' Compensation Insurance, etc. – a very bad and expensive idea! But, not really that common.

OR

- Didn't know how to classify their worker(s) properly

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What is the UI Program's role?

- We educate employers on how to properly classify their workers as employees or independent contractors

But in the end, we:

- Determine who is an employee or an independent contractor
- Actively look for workers that are misclassified
- Enforce UI tax law ☹️
- Adjust tax/wage reporting, if necessary

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How are misclassified workers detected?

- Workers who file for unemployment benefits, but we can't find their employers
- Anonymous tips from workers, unions, competitors, and ex-spouses
- Random audits
- *Targeted* audits
- Data analytics and various crossmatches

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How do we determine worker status?

- There are five factors used to distinguish independent contractors from employees
- We ask employers and workers pointed questions to better understand their relationship
- Once we have information from both parties, WE determine the status of the worker
- **AND all others performing similar services for the firm**



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Law determines worker classification

Most governmental agencies have rules to determine if someone is an employee or independent contractor.

- Government makes the determination, not you
- Not the same for all agencies (though rules are very similar)
- Determinations by job class, not per person
- MN Unemployment Insurance Rules – 3315.0555 Sub. 1
- MN Unemployment Insurance Law – 268.035 Sub 9a & 25b

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Worker classification

Minnesota Unemployment Insurance (UI)

MN Rules 3315.0555 Sub. 1 - Five factors to be considered when determining if a worker is an Independent Contractor:

1. **Control** ←
2. **Discharge** ←
3. **Payment**
4. **Investment**
5. **Premises**

Carry the most weight

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Worker classification factor #1: Control

1. Control – Does the business or the worker control the “means and manner” in which work is performed?

<p>Employer / employee relationship</p> <p>The business has the right to control the manner in which the services are performed, including requiring that work be done at specific times.</p> <p>The business specifies the methods used to complete the work.</p> <p>The employee generally does not have the right to hire a substitute without the business's approval.</p>	VS.	<p>Independent contractor relationship</p> <p>The business's only concern is the end result of the contractor's efforts.</p> <p>The contractor requires no training.</p> <p>The contractor can generally hire a substitute to complete the job without the business's approval as long as the work is completed as specified in the agreement.</p>
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Worker classification factor #2: Discharge

2. Discharge – Can either party sue for breach of contract, or can either party terminate the relationship without legal liability?

<p>Employer / employee relationship</p> <p>The business has the right to discharge the employee without necessarily incurring any legal liability for not allowing the employee to complete the job.</p>	VS.	<p>Independent contractor relationship</p> <p>The business and the contractor are in a binding contract where failure to complete services may be a breach of contract in which a legal remedy could be pursued by either party.</p>
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Worker classification factor #3: Payment

3. Payment – Does the business or the worker decide the value of the work? Is the worker paid by the job or are they paid in a regular and routine manner?

<p>Employer / employee relationship</p> <p>The business pays the employee in a regular and routine manner for services performed (e.g., hourly or biweekly)</p>	VS.	<p>Independent contractor relationship</p> <p>The contractor is paid by the job, on a bid basis, by percentage of completion, etc. and has both the ability to make a profit, and to sustain a loss.</p>
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Worker classification factor #4: Investment

4. Investment – Does the business or the worker furnish a car or truck, tools or equipment, and/or materials or supplies necessary to perform the work?

<p>Employer / employee relationship</p> <p>The business provides:</p> <ul style="list-style-type: none"> • A company car or truck • Tools or equipment • Materials or supplies 	VS.	<p>Independent contractor relationship</p> <p>The contractor has a substantial personal investment in the tools and equipment needed to complete the work. They have supply and material costs that are not directly reimbursed by the business.</p>
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Worker classification factor #5: Premises

5. Premises – Does the business or the worker control the premises where the work is performed?

<p>Employer / employee relationship</p> <p>The business generally controls the premises where the services are performed</p>	VS.	<p>Independent contractor relationship</p> <p>The contractor generally has their own place of business and makes their services available to the public on a continuing basis</p>
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Worker classification – Construction Industry

There are additional considerations regarding independent contractors in the construction industry:

- Usually has a higher frequency of misclassified workers
- MN Dept. of Labor and Industry has nine specific conditions employers must meet to properly classify
- Conditions can be applied to all Independent Contractors

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Worker classification: construction

Reference: [Minnesota Department of Labor & Industry Law, §181.723](#)

Must meet 9 conditions in order to be classified as an independent contractor

- If all 9 are not met, then you have employees
- What are the 9 conditions?

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Worker classification: construction

1. Maintains a separate business with the independent contractor's own office, equipment, materials, and other facilities
2. Holds or has applied for a federal employer identification number or has filed business or self-employment income tax returns with the federal Internal Revenue Service based on that work or service in the previous year
3. Operates under contracts to perform specific services or work for specific amounts of money under which the independent contractor controls the means of performing the services or work
4. Incurs the main expenses related to the service or work that the independent contractor performs under contract
5. Is responsible for the satisfactory completion of work or services that the independent contractor contracts to perform and is liable for a failure to complete the work or service
6. Receives compensation for work or service performed under a contract on a commission or per job or competitive bid basis and not on any other basis
7. May realize a profit or suffer a loss under contracts to perform work or service
8. Has continuing or recurring business liabilities or obligations
9. The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures

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**Any questions on
worker classification???**

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10:45 – 11:45 AM

Unemployment Insurance

It's been awhile since you've seen our agenda. So what are we going to talk about?

- Reporting wages – what are and are not wages?
- How is your tax rate is calculated?
- Managing your unemployment costs

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Reporting Wages

- Employers are required to report wages for their employees every quarter.
 - We call this data submission "wage detail"
 - We're *not* going to go into the mechanics of how to report wages, though we're happy to answer questions
- We *will* talk about what types of compensation have to be reported as "wages" and which types don't
- As a general rule, most of the payments you make through your payroll system are wages – but there are a few exceptions

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Wages to report to UI

Basic rule: compensation you give to an employee should probably be reported to UI as wages. Including but not limited to:

- ✓ Salary
- ✓ Cash wages
- ✓ Commissions
- ✓ Bonuses
- ✓ Profit sharing
- ✓ Tips
- ✓ Back pay
- ✓ Sick pay

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Wages to report to UI

✓ Payments to officers/shareholders of a *Corporation* or *LLC* with less than 25% ownership

X Owners/shareholders who own 25% or more of the corporation or LLC

- o These employees are NOT covered by UI law unless they access their employer account and elect coverage
- o You should NOT report these wages on your quarterly wage detail submission (unless coverage was elected)
- o Just indicating an employee is an owner/officer on a quarterly wage detail submission is NOT electing coverage

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Wages to report to UI

Less common: But you still need to get it right.

- ✓ Reasonable value of meals, rent, housing, or any similar advantage
- ✓ Cash value of any remuneration paid by a means other than cash
- ✓ Payments made under a deferred compensation or cafeteria plan, discussed in "Employee Benefit Plans" (see UIMN website)
- ✓ Value of any special discount or markdown allowed to an employee on goods purchased from/services supplied by the employer, even when the purchases are optional and do not constitute regular or systematic payment for services

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Reporting wages

- Report the wages you paid your employees to UI each quarter
- We use this information in several ways:
 - To calculate your UI taxes
 - To calculate unemployment benefits
 - It's also used as the basis of other integrity things.

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Reporting wages

- There are several ways for employers to submit wage detail:
 - **Manual entry** (usually small employers)
 - **Copy names and social security numbers from previous quarters** (easiest when things don't change much)
 - **File upload** (multiple options. Your payroll software probably helps)
 - **Zero Wage Report** (Thank you)

Are you submitting in the method that is most efficient for you?
Refer to www.uimn.org for details

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Any questions on wage detail reporting?

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Next we will talk about...

- The impact on your business when your employees receive unemployment benefits
- Tax rate calculations and reimbursements
- And then the ever-popular “Managing your UI” costs section

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Impact on your business when former employees receive unemployment benefits

When your former employees receive unemployment benefits your business has to repay the UI Trust fund. How is that done?

- Tax paying employers:
 - Unemployment tax rate will be affected (likely increase) for four years.
- Reimbursing employers:
 - Your business will receive a bill for the unemployment benefits paid to former employees for the previous quarter.
- Let’s get into the details...

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UI “Taxpayers” and “Reimbursers”

Taxpaying employers - pay tax quarterly

- For most employers, this is the only option (including all for-profit employers)
- Taxpaying employers are assigned an individual UI tax rate, which is adjusted annually
- Taxpayers “repay” the UI Trust Fund for UI benefits their former workers “charge” **over the course of four years**

Reimbursing employers - billed quarterly for benefits received by their former employees

- Only certain types of employers may be reimbursers:
 - State of MN and political subdivisions such as school districts default to the “reimbursement” method
 - Charitable non-profits default to ‘taxpaying’, but can request reimbursing status
 - American Indian Tribes
- Reimbursers repay the UI Trust Fund for UI benefits their former employees receive. Employer is “charged” **on a dollar-for-dollar basis for the previous quarter**

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**UI tax rate calculation:
Base rate + Experience rate components**

Two primary components of tax rate:

- Base
- Experience Rate

Two possible assessments:

- Additional
- Special

(Don't worry about these – only when the Trust Fund is low)

Because it is the most variable component, today we'll focus on Experience Rates!

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UI tax rate calculation: What is an Experience rate?

- New employers are assigned a rate based on the average experience rate for their industry
- If you're not a new employer, your experience rate is ratio benefits paid to your employees to the taxable wages you paid all your employees for the same period of time (benefit charges / taxable payroll)

As a note: It is a little more complicated but we'll get to that

- Experience rating period = 48 months

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Tax rate calculation: Tax rate basics

Tax information for 2019:

- Taxpaying employers pay UI tax on the first \$34,000 paid to each employee (*Taxable Wage Base*)
- Minimum experience rate = 0.00%
- Maximum experience rate = 8.90%

Plus base tax: 0.10%
= 9.00%

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Tax rate calculation: Why do Experience rates matter so much?

Higher experience ratings mean higher UI tax rates.

- If assigned rate is 0.10% = \$34 per employee, per year*
- If assigned rate is 9.00% = \$3,060 per employee, per year*

* Assuming the employee was paid at least \$34,000 per year.

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Managing your UI tax rate

- Let's talk about what you can do to help manage your unemployment insurance cost
- Understanding how unemployment insurance works may help you save money.

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Managing your UI tax rate

Your experience rate is determined by benefit charges. So what can you do?

- **Raise an Issue**
 - Raise an issue when your former employee may not be eligible to receive unemployment benefits and/or your account shouldn't be charged
 - Maintain detailed records – written warnings, dates etc.
 - Respond thoroughly to UI questionnaires
 - Only include information about the employee in question – Don't include privacy information for other employees (example, SSN's)
- **Appeal**
 - Appeal when you receive a Determination of Eligibility indicating your former employee may receive UI benefits and you disagree with the facts or reasoning of the determination
- **Review Benefit Charges**
 - The employer self-service system is very accurate, but it's always wise to review the charges on your account

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Managing your UI tax rate

How do you know when to raise an issue / appeal to protect your UI account?

By having a sense of who is eligible for UI benefits – which we'll spend some time talking through in just a moment.

The UI Program provides benefits to people that lose their job due to no fault of their own. Here are the basic requirements for applicants:

- Must have sufficient earnings in their base period (currently \$2,900)
- Must be unemployed or have reduced hours through no fault of their own
- Must be legally authorized to work in the U.S.
- Must be actively seeking suitable work each week
- Must be able and willing to begin suitable work without delay when offered

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Any questions on managing your UI tax rate?

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Managing your UI tax rate discussion: Eligibility for benefits

Fun part - I'm going to ask you a number of true/false questions and then provide an explanation.

This may assist you in managing your tax rate and conducting your UI business

Let's get started!

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True or False?

UI benefits can be based on temporary or part-time employment.

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Answer: True

UI benefits can be based on temporary or part-time employment.

- \$2,900 earned any time in 4-quarter “base period”
- The key is that the \$2,900 threshold has been crossed.

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True or False?

An applicant’s weekly benefit amount is 3/4 of their average wage.

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Answer: False

An applicant's weekly benefit amount is 3/4 of their average wage.

- An applicant's weekly benefit amount is **about 1/2** of average weekly wage (up to the maximum weekly rate - \$717)

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True or False?

Applicants usually receive full unemployment benefits for 52 weeks.

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Answer: False

Applicants usually receive full unemployment benefits for 52 weeks.

- An individual can receive UI benefits for up to 26 weeks per "benefit year". Applicants who did not work for the entirety of their base period may not be eligible for the full 26 weeks of benefits.
- An applicant might be unemployed sporadically during his or her 52-week "benefit year". When this occurs, benefits are charged to the original base period employer(s).

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True or False?

UI applicants who are students can limit their work search to part-time jobs that fit their school schedule.

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Answer: False

UI applicants who are students can limit their work search to part-time jobs that fit their school schedule.

- In general - job comes first, school second.
- Must be available the usual hours of one's occupation.
- Exception: approved training for "Dislocated" workers

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True or False?

People who are too sick to work can receive UI benefits.

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Answer: False

People who are too sick to work can receive UI benefits.

- There is no such thing as UI sick pay.
- To be paid benefits for any week, one must be able to work and available to accept work without delay.

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True or False?

The longer you keep a new employee who can't do the job, the higher your risk of increased UI cost.

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Answer: True

The longer you keep a new employee who can't do the job, the higher your risk of increased UI cost.

- The more money you paid the employee during the base period, the greater the potential impact on your experience rate.

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True or False?

If you schedule a worker for less than half their usual weekly hours of work, they may be eligible for partial UI benefits that week.

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Answer: True

If you schedule a worker for less than half their usual weekly hours of work, they may be eligible for partial UI benefits that week.

- Workers whose hours have been significantly reduced may be eligible for a partial UI benefit
- Weekly benefit amount is half their weekly wage
- 50% of part-time earnings reduce the UI benefit for that week

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True or False?

An on-call, substitute, or seasonal employee who is between work assignments is, by law, laid off due to a lack of work.

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Answer: True

An on-call, substitute, or seasonal employee who is between work assignments is, by law, laid off due to a lack of work.

- Lack of work is lack of work - doesn't matter the cause or that the individual knew the job would end.

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True or False?

If you provide a consistent, scheduled amount of part-time work to an employee, you may not be charged for UI benefits paid if they lose their full-time or other job.

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Answer: True

If you provide a consistent, scheduled amount of part-time work to an employee, you may not be charged for UI benefits paid if they lose their full-time or other job.

- Work **MUST** be scheduled and ongoing - NOT on call or seasonal. Schedule can be weekly, monthly, every other weekend, etc.

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True or False?

Most workers who quit their jobs are not eligible for UI benefits.

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Answer: True

Most workers who quit their jobs are not eligible for UI benefits.

- Remember: unemployed due to no fault of your own
- With a few exceptions
- Most common exception? Verified medical reason

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True or False?

Most workers who are fired from their jobs are not eligible for UI benefits.

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Answer: It Depends

Most workers who are fired from their jobs are not eligible for UI benefits.

- Responding to UI questionnaires is critical to help us tell the difference
- We decide who is eligible. Don't tell us "it was misconduct". Tell us what happened and why it mattered to YOUR business

§ Subd. 6. **Employment misconduct defined.** (a) Employment misconduct means any intentional, negligent, or indifferent conduct, on the job or off the job that displays clearly:

- (1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee; or
- (2) a substantial lack of concern for the employment.

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What employment misconduct is not..

(b) Regardless of paragraph (a), the following is not employment misconduct:

- (1) conduct that was a consequence of the applicant's mental illness or impairment;
- (2) conduct that was a consequence of the applicant's inefficiency or inadvertence;
- (3) simple unsatisfactory conduct;
- (4) conduct an average reasonable employee would have engaged in under the circumstances;
- (5) conduct that was a consequence of the applicant's inability or incapacity;
- (6) good faith errors in judgment if judgment was required;
- (7) absence because of illness or injury of the applicant, with proper notice to the employer;
- (8) absence, with proper notice to the employer, in order to provide necessary care because of the illness, injury, or disability of an immediate family member of the applicant;
- (9) conduct that was a consequence of the applicant's chemical dependency, unless the applicant was previously diagnosed chemically dependent or had treatment for chemical dependency, and since that diagnosis or treatment has failed to make consistent efforts to control the chemical dependency; or
- (10) conduct that was a consequence of the applicant, or an immediate family member of the applicant, being a victim of domestic abuse, sexual assault, or stalking. For the purposes of this subdivision, "domestic abuse," "sexual assault," and "stalking" have the meanings given them in subdivision 1.

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True or False?

Violating a written policy counts as "misconduct" and disqualifies an applicant from receiving UI benefits.

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Answer: It Depends

Violating a written policy counts as "misconduct" and disqualifies an applicant from receiving UI benefits.

- Was the violation serious or minor?
- Minor violations can become serious after warnings.
- We need information from you to determine whether the violation was serious or not.
- We work with 130,000 employers. The same behavior may be serious for one, and common practice for another. Why did it matter to YOUR business?

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True or False?

The more reasons an employer has for firing someone, the more likely they will be disqualified from benefits.

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Answer: Not exactly

The more reasons an employer has for firing someone, the more likely they will be disqualified from receiving UI benefits.

- Bad strategy: "let me count the ways..."
- Key question for us: what happened to trigger the discharge?
- Just being annoying is not misconduct.
- If you tolerated the same bad behavior for 2 years, it is not likely misconduct.

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True or False?

Joe had missed work this year due to flu, colds, and two days of car trouble in the winter. He was on final warning for having 9.5 attendance points. He knew he could be fired for one more absence. He called in sick and provided a doctor's note, but was still fired.

Joe is eligible for unemployment benefits.

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Answer: True

Joe had missed work this year due to flu, colds, and two days of car trouble in the winter. He was on final warning for having 9.5 attendance points. He knew he could be fired for one more absence. He called in sick and provided a doctor's note, but was still fired.

Joe is eligible for unemployment benefits.

- What is the definition of misconduct?
- Excessive absence is *serious*, but is getting sick *intentional or negligent*?
- Absence due to illness (with proper notice) is NOT misconduct.

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True or False?

The *reasons* for absences are more important in deciding UI benefit eligibility than the *number* of absences.

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Answer: True

The *reasons* for absences are more important in deciding UI benefit eligibility than the *number* of absences.

- How many absences were due to illness?
- How many absences were avoidable or preventable?
- Employers can require doctor notes from apparent abusers.

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True or False?

If you have a “no fault” attendance policy, there is no need to document the reasons for an employee’s absences.

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Answer: False

If you have a “no fault” attendance policy, there is no need to document the reasons for an employee’s absences.

- Document anyway.
- Misconduct is the key...

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True or False?

Being fired for a “no call-no show” absence disqualifies one from UI benefits.

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Answer: It depends

Being fired for a “no call-no show” absence disqualifies one from UI benefits.

- This part sometimes annoys employers – it can be messy
- Not calling in IS *serious*.
- In jail? → Not an excuse
- In the hospital? → Maybe
- Commonly heard:
 - “Told my girlfriend to call...”
 - “I called but they didn’t get the message...”
- We have to accept statements from you AND the applicant

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True or False?

When applying for UI benefits, some applicants use “poetic license” in describing why they became unemployed.

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Answer: True

When applying for UI benefits, some applicants use “poetic license” in describing why they became unemployed.

- Employers should be *specific* and *detailed* if alleging misconduct.
- Details make it real, in case the applicant provides a different version or denial of events.



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True or False?

If an applicant’s statement is different from the employer’s, we believe the employer because they are usually more honest about what happened.

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Answer: False

If an applicant’s statement is different from an employer’s, we believe the employer because they are usually more honest about what happened.

- How do you determine the truth between two versions from two different people you don’t know? That’s what we have to figure out.
- Who is giving details and documentation?
 - Whose information is more complete and consistent?
 - Employers often have an advantage with documents and witnesses, but applicants have first-hand experiences

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Congrats! You passed!

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UI law stuff

It's all in Minn. Stat. Chapter 268:

- Section 268.047 – Employer Charges and Relief
- Section 268.085 – Applicant Eligibility & Income that affects it
- Section 268.095 – Disqualification for Quits and Discharges

Go to www.uimn.org - left side links to UI law.

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Review: When should you respond to a notice that an employee has filed for UI benefits?

- Generally, if we send you something, it's a good idea to respond. "Over-responding" is safer than "under-responding".
- For example, we need to know when an employee:
 - Is still working for you. (Give their hours per week and hourly rate of pay.)
 - Is unemployed for a reason other than layoff (quit, fired, leave of absence, suspension, refused recall)
 - Might not be available for work (full-time student, severe work restrictions, self-employment, etc.)
 - Has applied for a disability or pension benefit.
 - Is receiving vacation or severance pay from you.
- We are the experts. Tell us what you know.
- If we need more information, we will always contact you.
- We review all the facts, from all pertinent parties, to make our decisions.

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Review: Misconduct (and UI costs)

- Absence due to illness or injury, with proper notice, is not misconduct.
- "Minor" offenses can become misconduct after warnings.
- Only *intentional* or *negligent* behavior is misconduct.
- If *possible* misconduct, raise an issue. Be thorough when completing the Request for Information!
- We will ask you for more details – if we need them.

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Review: Other tips to control UI costs

- If possible, keep employee work hours fairly consistent
- Make good use of probation periods and performance evaluations
- Give policy training to new hires and have them sign for it
- The more money you paid the employee during the base period, the greater the potential impact on your experience rate
- Document all reasons for absences or tardiness
- Document all warnings

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Resources

Assistive information is available on www.uimn.org

- **Employer User Guide:** Step-by-step instructions for accessing/using your online employer account
- **Employer Handbook:** Overview of the MN UI Law
- **Informational Videos:** Topically-based UI videos

Also:

- **Customer Service Center:**
 - Staff available to answer your questions
 - Telephone 651-296-6141 (option 4)
 - Monday - Friday, 8 a.m. to 4:30 p.m. (except holidays)

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Questions?
