



HR Examiner

*Examining practical HR issues business owners
and managers encounter every day*

Frequent Calls For Help: Unemployment and Employment

December 2008

HR Mastery
Groups and
other Services

2009 will be my third year partnering with the Stanton Group to offer HR Mastery Groups. These are monthly roundtable meetings with people with HR responsibilities. These 2-hour monthly meetings focus on your HR needs. It's a great opportunity to get

Unemployment Woes

I've received a multitude of calls regarding unemployment claims. Today I'm playing "Myth-Buster" to help clarify a few of the incorrect legends that are floating out there.

Myth #1: "Since I have a 90-day orientation period (aka introductory period, probationary period), if I terminate an employee during this period, the employee isn't eligible for unemployment. And I'm off the hook for that expense."

Answer #1: Unfortunately, this isn't true. If an employee worked for you for any length of time as a temp, a regular employee or a probationary employee, they are still eligible to file for and receive unemployment. There is no grace period when it comes to unemployment. As long as the employee did not resign or was not terminated for "cause" (and there's a legal definition for cause in



support and ideas from other HR professionals and enhance your knowledge of HR law and practices.

The group is comprised of people whose sole function is HR as well as those who wear other business hats. Some members are new to HR and others have decades of experience. Some come from the private sector, some from the public sector and some from non-profit organizations. This diversity is what makes these groups so dynamic and educational.

Our 2009 groups will be starting in January and February. If you or someone you know is interested in learning more about this program (facilitated by me), call me. The sooner we hear from you, the sooner our groups can begin.

You Don't Have To Do HR Alone. Call

each state's statutes), then they can file for and will likely receive unemployment benefits.

An employee who is terminated for poor performance is typically eligible for unemployment, unless you can show that they deliberately failed to perform tasks they know how to perform and have previously performed -- which is difficult to prove.

The 90-day new hire period is strictly an internal method for reviewing an employee's performance and determining early on in the employment experience whether or not you want to retain that employee and/or what training they need to be fully successful in the job. It does not eliminate the employee's right to collect unemployment.

Myth #2: "It took me a couple of days to make the decision to terminate the employee for cause. The employee continued working while I was making the decision. I should not have lost my unemployment case."

Answer #2: One of the things that unemployment judges look for is that the policy violation (the "cause") was serious enough to warrant swift action, such as immediate termination. The fact that you waited a few days, implies that the employee's infraction wasn't that severe. Therefore, the judge won't necessarily consider the termination for "just cause."

If you can't decide what to do regarding terminating an employee, suspend the employee without pay while you investigate, then terminate if appropriate. The suspension shows the unemployment folks the seriousness of the infraction.

Of course, with any termination and in order to win any unemployment claim, document, document, document.

Arlene if...

- ▶ you haven't updated your employee handbook in a while...
- ▶ your managers need on-going, supervisory skills training...
- ▶ you need sexual harassment training...
- ▶ you need assistance with a difficult employee...
- ▶ you'd like someone to audit your HR practices for practical operations and/or legal compliance...
- ▶ your performance system isn't working...
- ▶ you need someone to call on regularly to perform employee relations support for your organization...

(FYI – I help many of my clients write their unemployment responses. Let me know if you need some assistance.)

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Employment Agreements

I've also had several clients recently present me with signed Employment Agreements between them (the organization) and their employees. There may be key positions in an organization, such as an Executive Director or President level position, where an Employment Agreement is necessary to protect both the individual and the organization. Other than that, I recommend that you create an Offer Letter describing pay handling and employee benefits. But you should not define a set period of employment for any of your employees, which is typically the purpose of an Employment Agreement.

One of the most employment important rights we have as employers is the right to enforce Employment-At-Will. This allows both the employer and the employee the right to terminate the employment relationship at any time, with or without notice, with or without cause, for any or no reason as long as you are not discriminating against a protected class of employees.

By setting a timeline for an individual's employment, you are negating employment at will. If you were to be held to this agreement, let's say you terminated the employee after 3 months of employment. You may be liable for continuing that employee's pay until the end of the agreement, which would be unnecessarily costly to your organization.

A typical offer letter may include the following items:

▶ you just want to hear my voice and have a laugh...

**Have a wonderful
New Year!**

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- Job title, supervisor name/title, hire date, orientation information
- Starting hourly wage for non-exempt employees or per pay period wage for exempt employees, pay period, plus the annualized calculation
- Insured benefits and their effective dates
- Time off benefits highlights
- Confidentiality Agreement, if applicable (you must inform employees about this BEFORE they are extended the job offer)
- I-9 proof of right to work

The offer letter should always include the employer and employee's rights under Employment at Will, even though it has a negative tone when you're excited about welcoming the employee to your organization.

It should never include the line: *We are looking forward to working with you for many years to come.* Or something like that. That would contradict the employment at will language as well. It would be better to wish them success as the newest member of your team.

I guess this December newsletter just doesn't have a lot of holiday spirit to it. However, I wanted to share the concerns and lessons my clients are experiencing.

That said, have a wonderful holiday season. Stay warm and cozy and here's to a terrific 2009 to you and your loved ones!

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About Arlene Vernon

Arlene Vernon, PHR, partners with small businesses as their Human Resource

Xpert to create their HR systems and solve their HR problems.

If you have gaps in your HR operation, have an employee problem to solve, or want to enhance your managers' skills, call Arlene today. Learn how HRx can save you time and help you avoid costly HR mistakes. HRx, Inc., Eden Prairie, MN 55344, 952-996-0975, www.HRxcellence.com. Arlene@ArleneVernon.com

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