

# HR Examiner

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

## How to “Win” Unemployment From Those Who Really Know

Arlene Vernon

One of the services I provide is HR Mastery Groups where I facilitate groups of HR professionals, who meet monthly to explore the issues we face in the field. I periodically invite guest presenters to these meetings to expedite our learning in a given area.

A few months ago I contacted an attorney, for whom I'd performed expert witness services, who became an unemployment judge, to see whether he could present to our group. He connected me to two judges whose responsibilities include educating employers on how unemployment works. They came and spoke to our group and shared an extraordinary number of tips, ideas, and methods to help us as employers be more successful in handling our unemployment claims.

Yes, two judges from the Department of Employment and Economic Development's unemployment office came to our group to help us better understand and be more effective participants in the unemployment process. There's certainly the lesson here that if you don't ask...

The quantity of information they shared is too numerous for this newsletter, so I'll share some highlights that I think will be most useful to you as business leaders, management, and HR professionals.

- **Understand the legal definitions** of what makes an individual eligible or not eligible for unemployment benefits. Employers must focus their responses on these legal definitions as a strategy to win their case. I typically use the exact wording in the law and explain how the employee's actions or behaviors tie specifically to each applicable definition.
  - MN Statute 268.095 subdivision 6 defines "Employment Misconduct."
  - MN Statute 268.095 subdivision 1 defines "Quits." If an employee quits he/she is ineligible for unemployment unless the reason for the quit meets one of the 10 exceptions in this statute.
- **Don't assume** that the judge will make the leap for you from the law to finding in your favor. You have to provide detailed information describing every aspect of the claim you're making. Don't worry about being long in your response, as long as your response addresses specific examples of what disqualifies the former employee from receiving benefits.
  - Be specific on the employee's actions. For example, don't say the employee was "rude to a customer." Say the employee yelled loudly at the customer, leaned in within 6" of the customer's face, and said, "X, Y, Z." Then include a thorough written statement from all witnesses.
- **Hearings.** We know these make or break the case. So be prepared with all your documentation, witnesses, and strategies. The more prepared you are, the better your credibility.
  - HR should not be the only person attending an unemployment hearing if s/he is not the sole witness to the circumstances. Have employees, management and other appropriate witnesses in attendance at the hearing. First hand evidence is pivotal in responding to the former employee's statement that the alleged facts are incorrect. Without a witness to rebut

the claims, the judge will likely find for the employee.

- Do not coach, whisper, or pass notes to witnesses during the hearings. It makes the employer look untruthful. Instead, ask leading questions during the questioning: “Do you recall when....”
- **Documentation.** Most managers put off documentation, but it’s pivotal to “winning” unemployment and saving the company money. Things to document or that are considered documentation include:
  - acknowledgment form from the employee handbook
  - attendance at training (include dates and topics)
  - coaching meetings/discussions
  - verbal warnings as well as disciplinary actions
  - witness statements
- **Your response:** All related documentation as well as truly thorough and complete responses to each question posed should be sent to DEED as well as to the claiming employee. Do not skip any questions; even if you think you already answered the question, answer each question. Follow all timelines. Attach, mail or fax supporting evidence. There is no opportunity to send late documentation so double and triple check that you’ve answered and included everything.
- **If you’re responding on line,** enter all your responses in a separate computer document then cut and paste into the system. Of course, save the document in your computer. The system has a 20-minute timer, after which you could be cut off and all your work lost. So

write it first, and then file your response.

There's also a relatively new law that prohibits employers from guaranteeing unemployment benefits to employees. So, your best option is not to discuss unemployment with employees at all during their separation (quit or termination).

Well, we're about twice the size of the usual newsletter and I've shared less than 10% of the information we were generously provided by the two judges.

If I can help in any way with questions you may have regarding unemployment claims or if you would like some assistance in creating a strong response to a claim, please feel free to call or email me.

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## About Arlene Vernon

Arlene has provided HR consulting and management training services to over 300 organizations since starting HRx, Inc. in 1992.

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