An experienced, multi-practice law firm working as a team to provide practical counsel and quality services.
Want to Win Unemployment Insurance Claim Protests? Plan Ahead

**Rule No. 2. Understand the IDES definition of “voluntary leaving without good cause attributable to the employer.”** Not all employee quits are created equal. The first question in a voluntary leave case is whether the employee had the option of remaining employed. If the employee quit because he was tired of making the same commute, he is ineligible for benefits because he had the option of continuing employment. If he is a truck driver, and can no longer drive because he lost his license due to a DUI conviction, his resultant work separation is a voluntary quit because his conduct caused him to lose the “tool of the trade” necessary to perform his job. What if the employee complains to her boss about a co-worker’s sexual advances, the boss does nothing (thinking she can take care of herself), the advances continue, and the employee quits? She will be eligible since the employer knew of the harassment and failed to take corrective action. In essence, the law says that she did not have the option of remaining employed in the unreasonable work environment.

**Rule No. 3. Document, document, document.** Armed with these definitions, consider what behaviors can be viewed as unreasonable work environment before you fire the employee. Pinpoint the work rule being violated. Talk to the employee about the violation and document the violation and the warning you gave the employee.

Have the employee sign the warning document, acknowledging that he received the warning. If the employee refuses to sign the acknowledgment, document that, too. Make a note of witnesses to the behavior. Obtain witness statements. All of these efforts will pay off when you file a complaint or participate in a telephonic hearing with an administrative law judge. Here’s a war story: Our client’s employee complained to management about her boss’ alleged intimidating and threatening behavior. Our client took prompt steps to address the situation, including counseling the boss and having the employee report to another manager. The employer documented its actions and had the employee sign an acknowledgment that the supervisory change was an acceptable resolution of her complaint. Several weeks later, the employee went to her new supervisor and announced that she quit because of an incident with her former supervisor the day before. She did not complain to her supervisor about the incident until she announced she was leaving work. The employee filed a claim and was awarded benefits. On appeal, we argued that the employee had a duty to make reasonable efforts to resolve the conflict before voluntarily leaving and seeking unemployment benefits. The fact that she didn’t complain about the most recent incident and the employer’s prompt action when she did complain saved the day for our client. The administrative law judge found that the employee left her job without good cause attributable to the employer and she was disqualified for benefits.

**Rule No. 4. Don’t delay.** Employers sometime discipline an employee for deliberate and willful misconduct (say, misuse of a company credit card) but decide not to fire the employee for the incident. Months later, the employer fires the employee because he is making too many mistakes, feeling that this is the “last straw.” Even though the employer had good reason to terminate the employee, the employee’s credit card misuse already was not made her ineligible for benefits. Discharging the employee after a substantial passage of time is viewed by the IDES as condoning the credit card misuse, and poor work performance alone is not misconduct.

Think through these definitions before you terminate an employee. Have written job descriptions identifying the tools of the trade necessary for the employee to perform his job. Document efforts you make to resolve work problems. Line up your witnesses. Careful planning and timely terminations bolster the likelihood that your protest will be successful. You also are in a better position to defend against discrimination claims related to the termination.
Texas Does It Again

By: Eugene A. DiMonte

The Texas Supreme Court recently ruled in favor of a national home builder, Lennar Corporation, against its insurance company in a case where Lennar repaired construction defects in many new homes built by Lennar without the insurance company’s approval. The insurance company wanted to wait to see if the affected home owners would bring claims. Lennar believed it would be less expensive to replace all the defective work to prevent damages from getting worse and notified its insured that it expected to be reimbursed its’ cost. There was a clause in the insurance policy prohibiting Lennar from voluntarily settling claims without the insured company’s consent which was not given. At trial the jury found that the insurance company had not been prejudiced and had the builder not taken steps to correct the defects the damages would have been greater. The Supreme Court ruled that because the jury found that the builder limited the damages that the insurance company was not prejudiced and ruled against the insurance company in favor of the builder. This result is not uniform throughout the United States but seems to be becoming a trend in favor of policy holders against their insurers.

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Rule No. 4. Don’t delay. Employers sometimes discipline an employee for deliberate and willful misconduct (e.g., misuse of a company credit card) but decide not to fire the employee for the incident. Months later, the employer fires the employee because he is making too many mistakes, feeling that this is the “last straw.” Even though the employee had good reason to terminate the employee, the employee’s credit card misuse is modificable and not make her ineligible for benefits. Discharging the employee after a substantial passage of time is viewed by the IDES as condoning the credit card misuse, and poor work performance alone is not “misconduct.”

To resolve work problems. Line up your witnesses. Careful planning and timely termination bolster the likelihood that your protest will be successful. You also are in a better position to defend against discrimination claims related to the termination.

Stephanie Wilson Gives Birth To Baby Boy

D&L is happy to announce that paralegal Stephanie Wilson and her husband, Jason, recently welcomed a healthy baby boy named Lucas to their family. This is Stephanie and Jason's third child, and both mom and baby are doing well. We wish them all the best.

DiMonte & Lizak - Highlights

Julia Jensen Smolka Speaks to High School Students

This past fall, Julia spoke to high school students at Glenbrook North High School in Northbrook and St. Benedict’s High School in Chicago as part of C.A.R.E. Chicago. CARE stands for Credit Abuse Resistance Education and it aims to teach high school students about the many consequences of consumer credit abuse. It is a group of Chicago area lawyers and judges whose goal is to educate students about the pitfalls of easy credit and students loans, before they get into trouble.

Ryan Van Osdol and Jordan Finfer Receive Recognition from Illinois Super Lawyers

DiMonte & Lizak, LLC is proud to announce that Ryan Van Osdol and Jordan Finfer have been named to the 2014 Illinois Super Lawyers’ Rising Stars list as top attorneys in Illinois in the field of business litigation. Ryan received this honor in 2012 and 2013, making this the third year in a row that he was nominated and recognized by other Illinois attorneys and judges for this prestigious award. This is Jordan’s first year being nominated as a Rising Star and he hopes to continue to receive recognition from the Illinois Super Lawyers’ nomination committee.

Alan Stefaniak and Richard Laubenstein Obtain Successful Results At Trial

Last fall Partner Alan Stefaniak successfully litigated a matter for a long standing construction client. After a day and half bench trial an award was made on an unsigned contract. Alan was able to prove that the parties conducted a contract existed. The award included interest at the contract rate of 18% and attorneys fees. Attorney Richard Laubenstein with assistance from Alan Stefaniak successfully litigated a remodeling contractor client's claim against a homeowner for breach of contract. The case was tried before a Cook County jury. It's rare that a builder prevails before a jury so a favorable verdict for our client was well received.
Want to Win Unemployment Insurance Claim Protests? Plan Ahead
By: Margherita M. Albarello

Employers hate unemployment claims. Benefit awards increase unemployment insurance tax rates. Protests can be time-consuming and results can be frustrating. Employers complain that even though they fired the employee for violating company policy, the employee was awarded benefits. Or, that the employee voluntarily quits, argues that she was fired, and is awarded benefits. Often, the problem lies not in the award itself, but in the lack of planning preceding the employment termination. The time to establish your protest is before the termination. Here are some key strategies:

Rule No. 1. Understand the Illinois Department of Unemployment Security (IDES) definition of “misconduct.” The employee is ineligible for benefits if he was fired for misconduct. The Illinois Unemployment Insurance Act requires the employer to prove that the employee deliberately and willfully violated a reasonable work rule and that the violation harmed the employer or the violation was repeated by the employee after a warning from the employer. Mere negligence or carelessness is not enough.

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