



WELCOME

Office of Employer Ombudsman
2015 Employer Seminar



DISQUALIFICATIONS AND INELIGIBILITIES

THE APPEAL PROCESS



DISQUALIFICATIONS & INELIGIBILITIES

MOST COMMON DISQUALIFICATIONS:

- VOLUNTARY LEAVING (QUIT)
- DISCHARGE (FIRING)
- REFUSAL OF WORK



DISQUALIFICATIONS & INELIGIBILITIES

VOLUNTARY LEAVING (QUIT)

The claimant is disqualified from receiving benefits if he/she:

- Voluntarily leaving work,
- Without good cause attributable to the employer

DISQUALIFICATIONS & INELIGIBILITIES

VOLUNTARY LEAVING (QUIT)

- The “burden of proof” is on the claimant to show either:
 - Leaving was involuntary, or
 - Leaving was voluntary, but with good cause attributable to the employer



DISQUALIFICATIONS & INELIGIBILITIES

VOLUNTARY LEAVING (QUIT)

To show the leaving was “involuntary,” the claimant must:

- provide medical evidence that continuing work would be injurious, and
- unsuccessfully attempted to secure alternate work from employer, and
- unsuccessfully attempt to secure leave of absence.

If all conditions met, the claimant’s leaving will be considered to have been involuntary.

DISQUALIFICATIONS & INELIGIBILITIES

VOLUNTARY LEAVING (QUIT)

- Leaving was **voluntary**, but with good cause attributable to the employer.
- Claimant must show attempt to correct legitimate problem by bringing it to employer's attention, and must show problem was not corrected after reasonable time.

DISQUALIFICATIONS & INELIGIBILITIES

VOLUNTARY LEAVING (QUIT)

- A claimant who is disqualified cannot begin or continue to receive benefits from any employer until the claimant earns 12 times his/her weekly unemployment benefit amount (that is, “rework”).
- If the claimant satisfies the rework, the account of the employer involved in the quit will not be charged. Instead, the “Nonchargeable Benefits Account” is charged.

DISQUALIFICATIONS & INELIGIBILITIES

DISCHARGE (FIRING)

- The “burden of proof” is on the employer to show:
 - “Misconduct” and
 - Connection with the work

DISQUALIFICATIONS & INELIGIBILITIES

DISCHARGE (FIRING)

- A claimant who is disqualified cannot begin or continue to receive benefits from any employer until the claimant earns 17 times his/her weekly unemployment benefit amount (that is, “reworks”). If the claimant satisfies the rework, the account of the employer involved in the discharge will not be charged. Instead, the “Nonchargeable Benefits Account” is charged.

DISQUALIFICATIONS & INELIGIBILITIES

DISCHARGE (FIRING)

"[Misconduct in an unemployment compensation case is] ... **conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.** On the other hand, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the [unemployment compensation] statute."

DISQUALIFICATIONS & INELIGIBILITIES

DISCHARGE (FIRING)

- The discharge can be for a single, serious incident of misconduct (such as assault, theft, insubordination)
- The discharge can be for a series of incidents, no one of which would be misconduct but which, in the aggregate, can be considered misconduct. But the **final incident** in the series must show some degree of wrongdoing by the claimant to sustain disqualification.

DISQUALIFICATIONS & INELIGIBILITIES

REFUSAL OF WORK

- The “burden of proof” is on the employer to show
 - Communication of offer of work
 - Suitability of offered work
 - Refusal of offered work
- The “burden of proof” then shifts to the claimant to show “good cause” for refusal



DISQUALIFICATIONS & INELIGIBILITIES

REFUSAL OF WORK

- Distance from residence
- Risk to health, safety, morals
- Physical fitness
- Length of unemployment
- Wage differential

DISQUALIFICATIONS & INELIGIBILITIES

REFUSAL OF WORK

- Wage differential
 - Until $\frac{1}{2}$ of benefits are paid:
 - ★ Prior experience and training
 - ★ 70% of prior wage
 - Once $\frac{1}{2}$ of benefits are paid:
 - ★ Any job within capabilities
 - ★ Job that pays at least minimum wage, **and** average wage in area, **and** 120% of weekly benefit amount.

DISQUALIFICATIONS & INELIGIBILITIES

REFUSAL OF WORK

- If a claimant refuses an offer of suitable work, a disqualification can be imposed. If the claimant turns down hours of work they could have had, the issue will be “**lost remuneration**” and the pay for hours the claimant could have worked will be used to reduce unemployment benefits for the week just as if the hours had actually been worked and the wages paid.

DISQUALIFICATIONS & INELIGIBILITIES

REFUSAL OF WORK

To requalify for benefits after refusing an offer of suitable work:

- the claimant must serve a 13-week period of requalification, and
- benefits will be reduced by 13 weeks (or the number of weeks remaining on the claim if fewer than 13).

DISQUALIFICATIONS & INELIGIBILITIES

WEEKLY ELIGIBILITY:

- ✓ Be able to work
- ✓ Be available for full-time, suitable work (must keep UIA and employer informed of contact information)
- ✓ Seek work (must file monthly report of work search results)
- ✓ Register for work with MWA!
- ✓ Report/certify to MiWAM on appointment.

DISQUALIFICATIONS & INELIGIBILITIES

DENIAL PERIOD FOR SEASONAL EMPLOYERS:

- An employer that employs one or more workers hired to work regularly recurring periods of 26 weeks or less within a 52-week period can be designated as a “seasonal employer.”
- If “reasonable assurance” is given of re-employment for the next season, unemployment benefits will be denied to the employee between seasons, to the extent the benefits are chargeable to the seasonal employer.

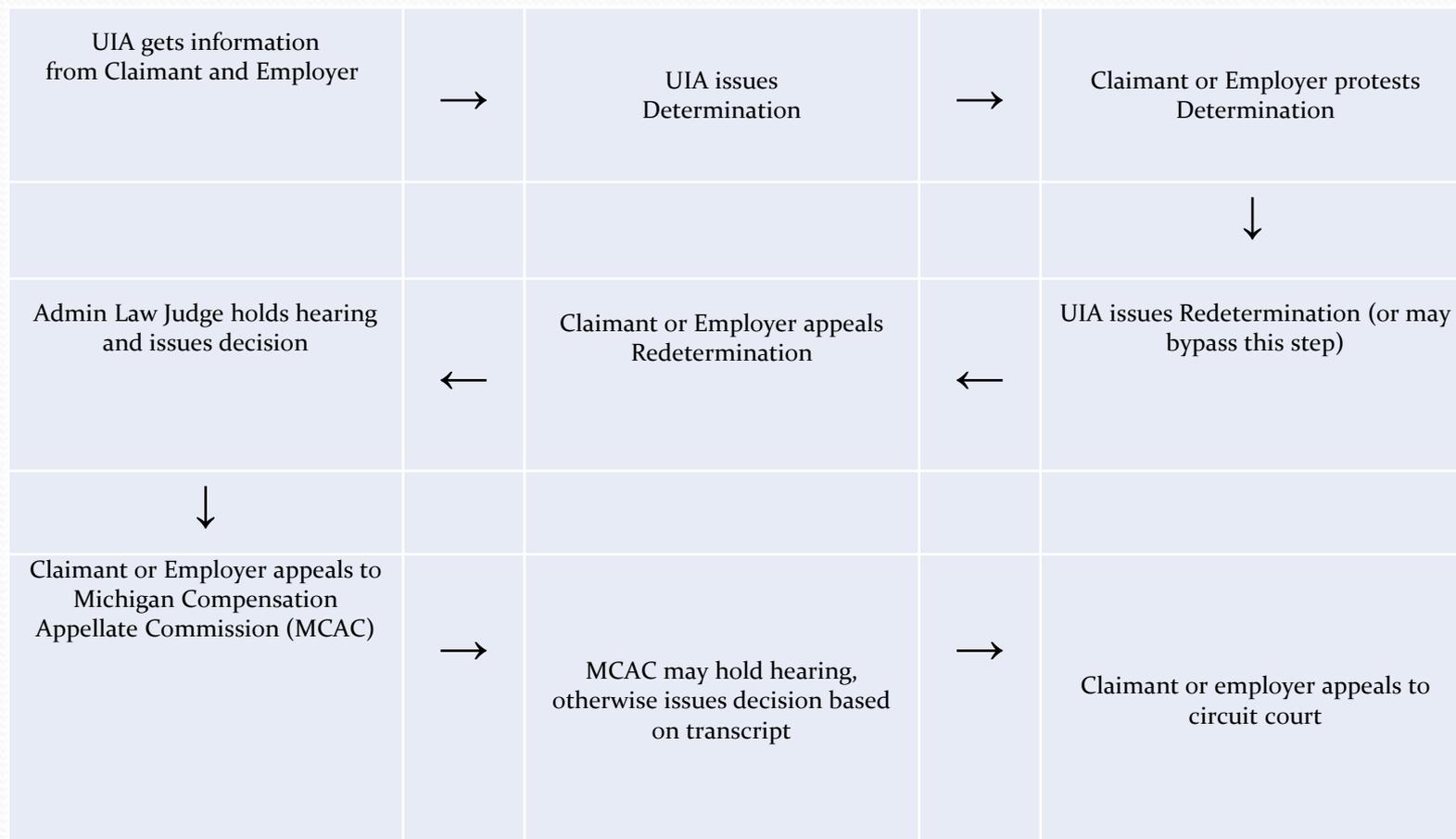


DISQUALIFICATIONS & INELIGIBILITIES

DENIAL PERIOD FOR SEASONAL EMPLOYERS:

- In addition to a “seasonal employer,” the denial period can also apply to:
 - a school, or
 - to a 3rd party contractor for a school, or
 - to an employer of a professional athlete.

THE APPEAL PROCESS



THE APPEAL PROCESS

- A protest or appeal must be received by the UIA within 30 days of the date of mailing of the dispute Determination or Redetermination.
- The 30 days starts to run the day after the date of mailing, and every day counts, including weekends and holidays.
- If the 30th day is a weekend or holiday, the protest/appeal is due by the end of the next day that is not a weekend or holiday.

THE APPEAL PROCESS

Why is it important to attend the Administrative Law Hearing?

- The Administrative Law hearing is a ***de novo* hearing**, meaning that none of the documents previously given to the UIA will be considered by the Administrative Law Judge (ALJ) in reaching his/her decision.
 - The ALJ takes **testimony** under oath.
 - The ALJ applies the **rules of evidence**, similar to the way they are applied in a court of law.
 - Each party gives direct testimony, and is subject to cross-examination.
- If the appealing party does not appear at the hearing, the appeal will be dismissed for “lack of prosecution.”
- If the party with the burden of proof does not appear at the hearing, the appeal could only be won if the other party makes a “*mea culpa*” statement.
- If the party with the burden of proof makes certain statements to meet that burden, the opposing party would wish to be present to respond to those statements, and to cross-examine those statements.

THE APPEAL PROCESS

What happens at an Administrative Law Judge Hearing?

- The ALJ determines whether he/she has legal authority (called “jurisdiction”) to hear the case. For example, if the appeal to the ALJ was late, the ALJ lacks authority to hear the case.
- The ALJ decides what issue(s) are before him/her for consideration. Generally, the issues are defined by the UIA in the Determination they issue.
- The claimant and employer present *information*, to the ALJ. They do this in the form of statements, under oath, at the hearing (called testimony”) or in the form of documents supported by testimony, and in the form of answers to questions of the other party (called “cross-examining”)
- The ALJ considers all the information and determines what is reliable and credible and what is not, and makes “findings of facts”.
- The ALJ cites the Section of the *Michigan Employment Security Act* that applies to the case.
- The ALJ decides whether the party with the burden of proof has won their case by meeting that burden by a **preponderance of the evidence**.

THE APPEAL PROCESS

Effective Preparation for the ALJ Hearing

- Exercise protest/appeal rights
- Read the Notice of Hearing to learn the issue(s) to be discussed at the hearing and about the rights of the parties
- Be available and on time for the telephone hearing
- Know who has the burden of proof
- Know what has to be proved
- Review your file and UIA's file before the hearing
- Have the right witnesses for the hearing
 - The **right** witness is the one who can testify as to facts within his or her own knowledge, based upon his or her own observations of the events pertinent to the case.
- Take the right documents to the hearing
- Consider using an Advocate

THE APPEAL PROCESS



Assistance is available, toll-free:
1-800-638-3994 and choose menu Item 2.

THE APPEAL PROCESS



Michigan
Unemployment Insurance Agency
Department of Talent and Economic Development | Talent Investment Agency

Workers

UIA > PUBLICATIONS

Employers

Fact Sheets

Advocacy

MI Employer Advisor

Forms

UIA Publications

Webcasts

- Denial of Unemployment Benefits for Seasonal Workers - Information for Workers [PDF](#)

Publications

- Employer Handbook (November 2014) [PDF](#)

UIA Press Releases

- Fact Sheet 76, Work Registration Needed for Jobless Benefits [PDF](#)

Report Fraud

- Governmental Positions Excluded From Receiving Unemployment Benefits

Filing for Unemployment Benefits

- [PDF](#)

- The Effect of Severance Pay on Unemployment Benefits [PDF](#)

- UCX 982 Unemployment Compensation for Ex-Service Personnel [PDF](#)

Act & Rules

- UIA Administrative Rules on the ORR website
- Michigan Employment Security Act (January, 2014 Version) [PDF](#)
- UIA Administrative Rules [PDF](#)

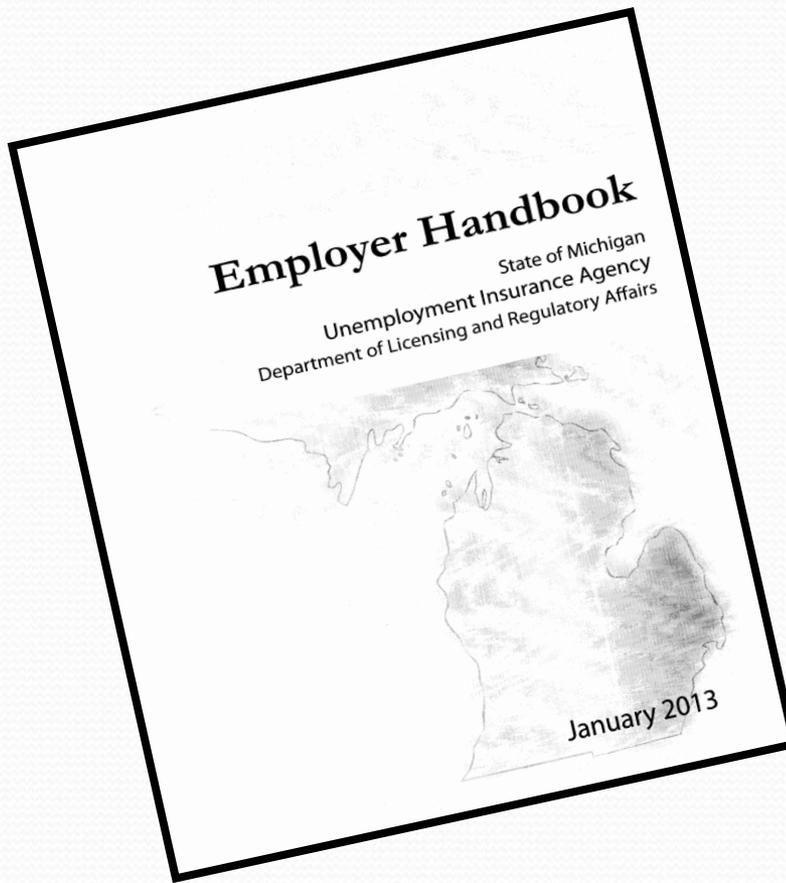
Look for

- UIA 1901- Unemployment Benefits in Michigan [PDF](#)

Click on
Publications



THE APPEAL PROCESS



The image shows the 'Table of Contents' page from the handbook. It is organized into two columns: 'Title' on the left and 'Section' on the right. The entries are as follows:

Title	Section
Employers Guide to the Liability of Employers and Coverage of Employees.....	A
Records and Reports Required of Employers and Penalties for Non-Compliance.....	B
Employers Guide to Unemployment Insurance Taxes.....	C
A Guide to Administrative Hearing System.....	D
Advocacy Fact Sheets.....	E
The Michigan Employment Security Act.....	F
Administrative Rules Related to the Michigan Employment Security Act.....	G
UIA Fact Sheets.....	H
History of the Unemployment Insurance Agency.....	I
The Agency's Web Site - www.michigan.gov/uia	J
Master Index for UIA Employer's Handbook.....	K
	L

At the bottom of the page, there is a small copyright notice: '© 2013 State of Michigan, Unemployment Insurance Agency'.

THE APPEAL PROCESS

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UIA > EMPLOYERS

Employers

Electronic Services for Employers

[Legislative Information](#)

- [Online Registration and Seeking Work Waiver](#)

[Taxes & Tax Credits](#)

A Registration and Seeking Work Waiver may now be requested on-line. In the past, employers had to submit the request in writing and receive approval for the waiver request. Now the waiver can be requested and approved in minutes! The form for employers to give employees (UIA 1711) may be found [here](#)

[Advocacy](#)

[Forms](#)

What's New

[Webcasts](#)

- [Employers: Hire the Best Talent!](#)

[Publications](#)

Post a Job and get qualified responses the same day. Access thousands of resumes for your ideal match. Many resources are available to assist employers in connecting with talent.

[UIA Press Releases](#)

- [Employer Handbook \(November 2014\)](#) 

The **Employer Handbook** is produced by the Unemployment Insurance Agency (UIA), one of the agencies within the Michigan Department of Licensing and Regulatory Affairs.

[Report Fraud](#)

- [Office of Employer Ombudsman](#)

[Filing for Unemployment Benefits](#)

Employers with questions can now call our Office of Employer Ombudsman (OEO) unit at 1-855-4UIAOEO (1-855-484-2636). Outside of Michigan, please call 1-313-456-2300. You can also email your question to OEO@michigan.gov.