

NOVEMBER 2002

Volume XII, No. 11

HOW DO I LET AN EMPLOYEE GO WITHOUT PAYING UNEMPLOYMENT BENEFITS?

One of the best ways to protect yourself from paying unemployment compensation benefits to employees is to use the 90-day probationary period. Under this provision, when you hire an employee, you must let him/her know that he/she is under a probationary period for 90 days and may be let go with or without cause during that period. The best way to do this is have the employee sign and date a written statement to that effect and keep it in the employee's file.

You must inform the employee of the probationary period within 7 workdays of the hire date. If, during the 90 days, the employee does not work out, you can let him/her go, and you will not be held responsible for any unemployment benefits the employee might receive. Please note: You must be able to prove that the employee was let go for unsatisfactory job performance, so it is important to document all disciplinary warnings, suspensions, or other actions that support your case.

If you have not notified an employee that he/she is under a 90-day probationary period and you subsequently terminate that employee, you will be liable for unemployment benefits unless you can prove that the employee willfully broke company policy. This is exceedingly difficult to prove, and the hearing officers most always side with the employee by awarding them benefits. The 90-day probationary period is the only way you can let an employee go for poor job performance and not be held responsible for unemployment benefits, unless you can prove willful misconduct.

Even if an employee is let go during a 90-day probationary period, he or she may still receive unemployment benefits, but the money will not come out of your account and will not increase your quarterly unemployment tax. The money will be paid from a general pool of funds.

When a former employee files for unemployment benefits, you will be mailed a Notice of Compensation Claim Filed Form that you must send back in to the state **within 10 days** of receiving it. On this form, you are asked to give the reason the employee was let go. You can also attach additional documentation that support your side of the story.

To protest an employee's claim for benefits, you must include detailed reasons why the employee is no longer working for you, such as dates of warnings, specific policies broken, and a detailed explanation of the final incident which caused the termination. The claim is based largely on what the employee presents to the Division, so it is imperative that you return this form with your explanation of the events. If you let the employee go pursuant to a 90-day probationary period, you need to check the appropriate box on the form so that the benefits the employee receives will not come out of your account.

If the worker voluntarily quit, he or she will be unable to receive benefits, and it is important that you state this clearly on the form. You should also try to document the fact that the worker quit voluntarily.

If you have any questions about unemployment compensation, please call the FUBA offices at 1-800-262-4483 and ask for Karen or Lance. Or, you can email us at fuba@fuba.org.

HOW DO I HANDLE OVERTIME PAY FOR A WEEK WITH A PAID HOLIDAY?

Since we are approaching the holiday season, we wanted to remind employers about your rights and responsibilities for paying your salaried employees during weeks with paid holidays.

Question: *During a work week that contains a holiday (like Thanksgiving), if I pay my employees for 8 hours on the holiday but they do not work because of the holiday, do those 8 hours count towards their total hours worked and then entitle them to overtime pay if they go over 40?*

Answer: The short answer is “no.” Overtime is only calculated on the hours an employee actually works. If an employee is paid but is not actually working (for example, a paid holiday, paid sick leave, etc), that time is not counted as time at work. The 8 hours of the holiday do not count as work, since the employees were given the day off and were not at work. Therefore, in a holiday week, if the employees are paid for the holiday and do not actually work that day, they are allowed to work up to 40 hours on the remaining days in the work week.

Please remember that the law does not require employers to pay their employees for not working on a holiday. In short, you are only obligated to pay your employees for hours they actually work. However, if your policy is to provide paid holidays, this question applies to your business.

If you have a wage and hour question, please call the FUBA offices at 1-800-262-4483 and ask for Karen or Lance.

REMINDER ABOUT SALE FOR RESALE CERTIFICATE EXPIRATION

If your business buys goods tax-free and then resells them to customers, here is a reminder: **your current resale certificate will expire on December 31 of this year.** You should receive a new certificate from the Department of Revenue, free of charge, before that date. It will be included in your sales tax coupon book. Do not give out the original of your certificate; make copies to distribute when your purchase is for resale. The account number on your certificate will not change; it will be the same each year.

If you sell goods tax-free for re-sale you

must document all exempt sales. There are 4 options:

- **You can get a copy of the buyers’ resale certificate each year.** Simply copy the buyer’s original certificate and keep it in your files. Remember to do this each January.
- **You can get an authorization number by phone at 877-FLRESALE (toll free).** If the purchaser forgets their annual resale certificate but knows their sales tax number, you can obtain a transaction number by phone at the time of the sale to verify that the certificate number presented is current and active. You dial the toll-free number, key in the purchaser’s sales tax certificate number, and the system will give you a 13-digit transaction number or will alert you that the purchaser does not have a valid resale certificate. Document the authorization number on each sales invoice, purchase order, or separate form. The sales document must contain the signature of the purchaser and the following statement: “The purchaser hereby certifies that the property or services being purchased or rented are for resale.”
- **You can get an authorization number electronically.** This method is for businesses that deal with numerous exempt purchasers. It involves sending a file of regular customer names and addresses who purchase for resale on electronic media to the Department of Revenue each year. The Department then issues authorization numbers for customers whose sales tax number is valid for resale. Information on using the electronic method can be obtained from the Department’s web site or by calling 850-488-3516.
- **You can get one copy of the purchaser’s resale certificate for certain open-account customers.** If a customer purchases on open account (not cash, check, or promissory note), the seller can obtain a copy of the purchaser’s annual resale certificate for their first transaction. The seller may then assume the resale certificate is valid as long as the dealer continues to sell on open account to that customer. In this situation, the seller does not need to get a new copy of the buyer’s annual resale certificate each year.