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E-Alert

September 30, 2005

New Notice Required To Disqualify Excessively Absent Employees From Receiving Unemployment Benefits

During the 2005 legislative session, the Georgia General Assembly amended the Georgia employment security law to require employers to provide additional notice to employees before rendering them ineligible to receive unemployment benefits.

Unemployment insurance provides limited replacement wages only to able-bodied workers who have lost their jobs through no fault of their own. Because an employer's unemployment insurance tax rate varies based, in part, on the amount of unemployment benefits it has paid to former workers, employers have an incentive to limit the amount they pay to discharged employees. This is best accomplished by showing cause for an employee's separation.

Under the prior law, an employee could be ineligible for unemployment benefits if he or she was discharged for excessive absences in violation of the employer's attendance policy. The employer merely had to have advised the employee that excessive absenteeism was grounds for termination. If the employee unjustifiably failed to notify the employer, this was true even if the absences were illness-related. HB 520 changed the law so that now, when the absence leading to discharge is illness-related, an employer seeking to disqualify the offending employee from receiving unemployment benefits may be required to show that it warned the offending employee, in writing and in advance of any absences, that unemployment benefits may be denied because of a violation of the employer's attendance policy.

The change in the law is the result of a compromise between legislators in the Senate and the House. The final result, however, differs significantly from the changes proposed in two companion bills introduced on behalf of employers. The two bills, SB 18 and HB 94, would have amended Section 34-8-194(2)(B)(iii) to render employees who violated employer attendance policies ineligible for unemployment benefits, so long as the offending employees were made aware of the attendance policies (by the employer or through common knowledge) and the policies were reasonably related to the job. Unlike the final version, the proposed changes would have had the effect of lessening the burden on employers.

Importantly, the Department of Labor has not yet changed its Regulations, and the publicly available Official Code of Georgia does not yet reflect the change in the law. Thus, Georgia employers

will not likely learn of the law's new requirement until after an employee's discharge and application for unemployment benefits, when the employer attempts to respond to the Employer's Information on Attendance Discharge (Form DOL-1199FF (D2))(employer's questionnaire) question #8, which asks whether the employer has complied with this requirement.

While the amended statute does not specify how written notice must be given to employees, employers must be mindful that they will be required to prove that such notice was given. One alternative may be documenting notice through a signed acknowledgment from each employee.

Should you have any questions or require any additional information, please contact Bill Steinhaus or any attorney in the firm's Atlanta office at (404) 881-1300.