

Top Ten Ways to Maximize Your New Jersey Unemployment Insurance Benefits

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Unemployment insurance (“UI”) benefits are an important part of New Jersey’s social safety net. UI benefits are there to provide temporary monetary assistance to qualified New Jerseyans who lose their jobs through no fault of their own, i.e., either through layoff, restructuring, downsizing, or termination without cause. As most people know, the UI program is funded, in large part, by a payroll tax paid by employers and employees. Even though employees pay this tax throughout their working lives, they often are barred from accessing UI benefits when they need them the most, due to minor filing errors, mistakes by the Department of Labor and Workforce Development (“DOL”), or employer misinformation. It is tragic when a hardworking New Jersey employee is unfairly or improperly denied the benefits they need. Below are the top ten tips for ensuring that you receive the UI benefits you deserve.

1. Do not commit misconduct.

One sure way to lose your UI benefits is to be fired for “misconduct.” In New Jersey, “misconduct” is divided into three categories: simple, severe, and gross. Simple misconduct includes acts of insubordination or sporadic incidents of lateness or unexcused absences from work. Employees who are fired for simple misconduct are disqualified from receiving UI benefits for 8 weeks. Severe misconduct includes drug or alcohol use on the job, repeated violations of a company rule, repeated lateness or absences after receiving a written warning, destruction or theft of company property or misuse of benefits. Gross misconduct includes any behavior that amounts to a crime, such as embezzlement or theft. Employees who are fired for either severe or gross misconduct are essentially disqualified from any receiving UI benefits.

In order to maximize your chance of receiving UI benefits, make sure you get to work on time, follow your supervisor’s directions, and adhere to company policies. In today’s tight economy, employers will not hesitate to report your “misconduct” to the DOL, even if the “misconduct” is an occasional lateness. Don’t give your employer any reason to accuse you of misconduct.

2. Do not resign.

One of the first questions the DOL will ask you when you apply for UI benefits is whether you left work “voluntarily.” If you answer yes, you will not receive UI benefits. Employers know this, and will sometimes trick their employees into agreeing to “resign” rather than be terminated. It sounds counterintuitive, but you are far better off accepting the termination rather than agreeing to a forced resignation. Don’t be worried about the “termination” appearing in your personnel files. Most employers will not divulge the reason for your separation from employment to prospective employers anyway. If your employer insists

that you “resign,” then get an agreement in writing that they will provide you with severance or other compensation to make up for the UI benefits that you will be missing as a result of the forced resignation.

3. Severance Pay = Good, Notice Pay = Bad.

Know the difference between “severance pay” and “notice pay.” Under the UI law, a worker can receive severance pay at the same time he or she receives UI benefits. However, the same does not hold true for “notice pay.” One cannot receive notice pay and UI benefits at the same time.

“Severance pay” is compensation paid to an employee to recognize past job performance and/or to obtain a release of any potential legal claims the employee may have. It is generally paid out as a lump sum, although it can also be paid out over time. “Notice pay” or “payment in lieu of notice” is pay given when an employer is obligated to provide advance notice of termination, but elects to terminate the employee immediately. The obligation to provide notice could arise from a contract, an employer handbook, or some other policy document. Notice pay is usually paid out according to the employer’s normal payroll schedule.

The DOL considers the period covered by the notice payment to be an extension of employment. Therefore, a worker is not qualified for UI benefits until the “notice” period is over. However, if these same payments are characterized as “severance,” the worker will not experience a delay in benefits.

4. Fill out your application correctly.

Correctly filling out your claim application is vitally important. Claims that contain incorrect or inconsistent information may be flagged as suspicious, jeopardizing your qualification for UI benefits. Filling out all the paperwork is tedious, but the result will be worth your while if you qualify for UI benefits. Take the time to check and double check your responses. Providing incorrect, incomplete, or untruthful information is not an option.

5. Understand the purpose of the fact-finding interview.

After you submit your application for UI benefits, the DOL will contact you to set up a fact-finding interview. The purpose of this interview is to find a justification to deny your claim for UI benefits. Literally, what you say can and will be used against you to deny you UI benefits. It is a good idea to hire an experienced employment attorney to prepare you for this interview.

The biggest pitfall in the fact-finding interview is revealing too much information about the reason for your termination. Remember, the DOL will use any negative information you provide to classify your termination as “misconduct” and therefore delay or deny your benefits. You must choose your words very carefully. If you can say it truthfully, try to describe the reason for your termination in vague phrases such as “my employer wanted to go in a different direction” or “my skill set was not in line with what the company needed.”

The DOL will contact your former employer to get its side of the story. Let the employer give all the gory details, if there are any. For your part, remember that the DOL is looking to deny you benefits. Tailor your answers accordingly, while still being truthful.

6. Copy and keep important documents.

You should absolutely copy and keep important documents from your employer, such as your termination letter (if you received one) and your performance reviews. You will need these documents later if your employer contests your application for UI benefits. For example, your employer may state that you quit your job when, in fact, you were fired. A termination letter will win the appeal for you. Or, your employer may argue that you were fired due to poor work performance. If your performance reviews say otherwise, you have a better chance of winning your appeal. Do not, however, copy and keep documents which are confidential, proprietary, or contain trade secrets of your former employer. These types of documents should be returned to your employer upon termination of employment.

7. Continue to certify for benefits.

After you fill out an application for benefits, you must continue to routinely certify for benefits every two weeks. You can certify for benefits either online or by telephone. During this process, you confirm your current address and contact information, your physical ability to work, that you are available to go to work immediately, and that you are actively seeking work. Make sure to keep a record of your job search as the State requires you to apply to at least three jobs a week in order to meet the “actively seeking work” requirement.

If you miss certifying for benefits, you will not be paid. If you are late certifying for benefits, you will not be paid unless you show good cause for the late filing.

8. Follow up is crucial.

If you file a claim and do not hear back from the unemployment office, make sure to follow up with them. With approximately 9% of New Jersey residents currently unemployed, the DOL is busy and backlogged. Do not assume they are on top of everything. If you have been certifying for benefits every two weeks and do not receive anything, make sure to give your designated unemployment office a call.

9. Do not hesitate to file an appeal if you are denied benefits.

After filing your claim, you will receive a determination in writing. If the DOL determines that you are not eligible for benefits, you need to promptly file an appeal. Your appeal must be in writing within 7 calendar days after delivery or within 10 calendar days after the mailing of the determination. After the DOL receives your appeal, it will schedule a hearing with your employer and a hearing officer. This will be your only opportunity to testify and provide evidence to the DOL. You should strongly consider hiring an attorney to represent you

at the appeal. With potentially tens of thousands of dollars in benefits at stake, it is worth the cost.

10. File for federal unemployment extensions.

Once your state benefits have been exhausted be sure to apply for extensions under the federal program. Under the current law, you may be eligible to receive extended benefits. Visit the DOL website for updates and filing deadlines for the federal extension benefits.

Conclusion:

The process of obtaining your UI benefits is not as straightforward as it appears. Being prepared by knowing what to expect before you make your application often makes the difference between obtaining benefits and being denied.

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