# STATE GOVERNMENT
## UI COST MANAGEMENT PROGRAM GUIDE

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INTRODUCTION

Unemployment Insurance

Unemployment Insurance (UI) was created in the depression era of the 1930’s and is designed to provide temporary income payments to replace a portion of the wages lost by those who are unemployed through no fault of their own and are able and available for work. It is not a “relief” payment and is not available just for the asking. It is job insurance wholly financed by employers. Originally, this insurance program only covered profit employers. By 1978, the North Carolina General Assembly expanded coverage to non-profit organizations and state and political sub-divisions. The Employment Security Commission, in compliance with Employment Security Law under Chapter 96 of the North Carolina General Statutes, administers UI for all employers in the State of North Carolina.

The UI Cost Management Program

The Unemployment Insurance Cost Management Program of the State of North Carolina began in January 1987 at the recommendation of the Governor’s Efficiency Study Commission. The mission of the program is to ensure consistent and effective management of unemployment claims and provide protection to the State from unwarranted charges. This has been accomplished by improved communication on UI issues, comprehensive records, and a proven system of claims administration and charge monitoring.

State Personnel Policy: Unemployment Insurance

The Employment Security Commission (ESC) has sole jurisdiction over decisions concerning unemployment insurance (UI) claims adjudication and benefit rights, and has adopted regulations in conjunction with ESC Law for claims processing and benefits administration. It is the policy of the State to comply with ESC Law and ESC regulations in a cooperative and expeditious manner. The purpose of this policy is to assure employees the benefits provided by law while protecting the State from undue benefit charges. The policy may be viewed in its entirety in Section 6, pages 4-6 of the State Personnel Manual.
PROGRAM RESPONSIBILITIES

The Office of State Personnel was given the responsibility by the Governor’s Office for the design, implementation and coordination of a program to improve UI cost management in State Government. Subsequent discussions between OSP, OSBM and the Governor’s Office led to the decision for a centralized cost control program, with the responsibility for claims administration by a (TPA). Proposals are requested and a selection is made from experienced s periodically as contracts end (typically every 5 years). Each agency and university has designated a UI Coordinator to be the liaison for all matters relating to UI within the agency, primarily involving providing separation information to the TPA, organizing attendance at unemployment hearings, coordinating charge reimbursements and report review. An outline of program responsibilities follows:

Office of State Personnel Responsibilities

* Contract oversight to assure the delivery of contracted services by the TPA
* Action as an intermediary between state agencies and the claims TPA
* Development and delivery of agency training programs on UI administration
* Service as a technical resource to the agencies on UI matters
* Assimilation of a comprehensive UI data base of claims activity
* Initiation of studies, recommendations and reports relevant to UI cost management
* Recommendations concerning the design and cost effectiveness of the UI Program
* Coordination with the Office of State Budget where there is a need to examine costing methods or financial aspects
* The monitoring of legislative actions concerning UI laws and benefits, and serve as spokesperson before legislative committees when it is within program interests
* Coordination with ESC on relevant questions and issues
Agency Responsibilities

* Participate in the UI training opportunities offered by the Office of State Personnel or the TPA

* Develop a working knowledge of the procedures designed for administration of the cost control program.

* Ensure that agency hiring authorities maintain adequate documentation to provide and support the separation information required by the ESC on individual claims

* Provide detailed and timely wage and separation information to the TPA.

* Work with the TPA to coordinate attendance of necessary witnesses and to assure the availability of documentation for UI hearings.

* Communicate to the TPA any agency issue or actions which may affect an individual’s benefit entitlement.

* Act as agency liaison for obtaining other information that may become relevant and valuable to the interests of the UI Cost Management Program.

Third Party Administrator Responsibilities

* Receive, examine and appropriately process all communications involving UI claims from the Employment Security Commission, on behalf of State Government, on a timely basis.

* Assist and provide counseling in all UI Hearing matters, and representation at UI hearings where needed.

* Provide to the Office of State Personnel monthly and quarterly management reports on UI claims activities and liabilities.

* Assist the Office of State Personnel with education and training concerning UI cost control measures and program procedures.
PRE CLAIM PREPARATION

UI Account Number
The Employment Security Commission (ESC) assigns unique account numbers to all employers in the State. The account numbers are used for reporting of payroll to identify employers liable for unemployment compensation paid to employees and for charging those benefits to the liable employer. The Office of State Personnel keeps record of all current UI account numbers of State agencies and universities.

Address Of Record
When the State contracts with a TPA, a written request is sent to the ESC to file the TPA’s address as the official Address of Record for all unemployment insurance matters for state agencies and universities. This action causes all claims-related mailings to go directly to the TPA for immediate handling.

Covered Employment
All temporary and permanent State employees are covered in accordance with Employment Security law, including those who work within or both within and without the State, employees working on a vessel, a State aircraft, or outside the United States. Some examples of the types of work not covered are as listed in G.S. 96-8 (6)i are: elected officials and members of the legislature, State and Air National Guard, members of the Judiciary, a student employed as part of a work-study program.

Quarterly Payroll
Employment Security law requires each employer in the State to submit quarterly reports of wages paid to each worker in covered employment. This task is typically handled by the agency/university payroll office or by the Office of State Controller. However, occasionally if a problem arises concerning payroll for a claimant, the UI Coordinator in may be contacted to assist with the problem resolution. The same quarterly payroll that is sent to the ESC is also provided to the TPA, usually with additional data to identify the wage fund source or department in which the employee worked. The TPA only accesses the payroll information upon receipt of an unemployment claim. Using the social security number on the claim the TPA verifies that the claim form lists the correct liable employer and account number. The agency payroll department is responsible for forwarding the payroll to the ESC and the TPA. OSP coordinates the initial flow at the beginning of the contract and acts as liaison to resolve any subsequent problems with payroll flow. OSP also receives from each payroll center a copy of the form NCUI-101, Employer's Quarterly Wage and Tax Report, with the gross payroll figure, which is used to calculate the TPA fee.
EVOLUTION OF A CLAIM

I. An unemployed individual (claimant) reports to the local Employment Security Commission Job Service office, registers for work and files a claim for unemployment benefits. He lists his last employer and relates his version of the reason for the separation.

II. The local ESC office sends Request For Separation Information claim form to TPA, requiring response within 10 days.

III. The administration office of ESC in Raleigh researches claimant’s eligibility. There are three basic eligibility requirements that must be considered:

A. Monetary Eligibility

A claimant must have wages in at least two quarters in his base period, with total base period wages of at least 6 times the current state average weekly insured wage, in order to establish a valid claim and benefit year.

* Base Period – Wages in the first 4 of last 5 completed calendar quarters, prior to filing of claim

* Benefit Year - The 52-week period beginning with the first day of the week in which an individual first files a claim.

B. Availability Requirement

In order for any claimant to be held eligible for UI, he/she must be able, available, and actively seeking work.

C. Reason for Separation

If the ESC determines the employee is at fault for his own unemployment, the employee is ruled ineligible for benefits.

If the ESC determines the employee is not at fault for his own unemployment, the employee is ruled eligible for benefits.
IV. Non-Disqualifying Separations - The following separation reasons will typically by non-disqualifying, rendering the employee eligible for benefits:

- Reduction on Force
- Lack of Work or Funds
- End of Temporary Employment
- Time Limited Appointment Ends
- Poor Job Performance  (Inability to meet standards; No Misconduct)
- Relocate with Spouse* 
- Involuntary Leaving for Health Reasons*
- Refusal of work offer due to ‘Undue family hardship’*

* The employer will not be held liable for the annotated separations although the claimant may receive benefits (excluding straight reimbursing employers).

V. Benefit Allowance - If all of the eligibility criteria are met the claim is allowed and after a one-week waiting period benefit payouts may begin.

VI. Weekly Benefit Amount - The amount of benefits an individual is entitled to receive per week of unemployment are proportional to base period earnings. The amount is subject to a cap of 66 2/3 of the State Average Weekly Wage that is computed annually by the ESC. The formula for computing an individual's weekly benefit amount is: divide the sum of the wages earned during the highest quarter of the base period by 26, rounded down to the nearest whole dollar. The result cannot exceed the maximum weekly benefit allowed by law. If the amount is less than $15.00 the individual is not eligible for benefits.

VII. Duration of Benefits - The duration of benefits is calculated by dividing the total base period earnings by the high quarter wage amount, then multiplying by eight and two-thirds, rounding to the nearest whole dollar. Multiply that number by the individual's weekly benefit amount to determine the total benefit an individual is eligible to receive.

VIII. Disqualifications - In some cases the claimant may be monetarily eligible and available for work, but benefits are denied due to the reason for separation, in accordance with G.S. 96-14. In these cases the claimant is disqualified from receiving benefits. Grounds for disqualification's which may be obtained through an employer’s efforts are:

A. Voluntary leaving without just cause attributable to the employer.
B. Discharge for misconduct as defined in Employment Security Law.
In these cases the claim could be disqualified for the unemployment or until certain conditions are met for requalification. In order to requalify, a claimant must:

1. Return to work five weeks and earn at least ten times the weekly benefit amount.
2. Subsequently become unemployed through no fault of his own.
3. Meet availability requirements.

There is another type of disqualification, which is for a **discharge for substantial fault**. This determination results in a time-certain disqualification of from four to thirteen weeks, after which time the claimant is considered requalified if other eligibility conditions are met. Substantial fault is defined as "acts or omissions…over which employees…exercise reasonable control and which violate reasonable requirements of the job…” but which did not rise to the level of misconduct.

A claimant may also be disqualified for **refusal of a suitable offer of work** without good cause. The length of the disqualification would depend on the length of the job offered; e.g., if it was a job of permanent or indefinite duration the claimant could receive the full disqualification as described above.

Employees of academic institutions who are **unemployed between academic terms** with a **reasonable assurance** that they will return to work when the next term begins will be denied benefits during the break. If an individual is not re-employed at the beginning of the next term, compensation will be paid retroactively.

**IX. Appeal Rights** - If either party disagrees with the initial determination of eligibility, an appeal may be filed within ten days of the mailing date. The interested parties will hold an unemployment hearing for presentation of facts. The referee’s decision may be appealed to the Commission either orally or in writing but the only arguments permitted will be based on points of law. At this level no additional facts may be presented. The Chief Deputy Commissioner will render a decision after review of the file and hearing transcript. Further appeal of the Commission Decision must be through the court system.
UNEMPLOYMENT INSURANCE COST MANAGEMENT PROGRAM
CLAIM HANDLING PROCESS

1. Employment Security Commission (ESC) sends claim to the State’s Third Party Administrator (TPA), via mail or email.

2. Third Party Administrator Claims Representative verifies employment through wage database.

3. Third Party Administrator Claims Representative contacts agency/university UI Coordinator (UIC) for separation information when applicable. Preferred mode of contact is e-mail, followed by fax (sample form attached), and phone. If UIC’s response requires secondary contact with supervisor for details, same communication mode will apply.

4. Upon receipt of separation information from UIC, Claims Representative processes as follows:
   a) **Non-Protestable Issue**: Enters separation and disposition codes into the TPA database.
   b) **Protestable Issue**: Formulates response to ESC and returns claim form within required timeframe. Enters appropriate codes into TPA database.

5. Upon receipt of the ESC’s determination, the Claims Representative processes as follows:
   c) **Favorable Determination**: Updates the database to change from pending to favorable.
   d) **Unfavorable Determination**: Contacts the UIC to determine if facts warrant appeal; if so requests a UI hearing from ESC within required timeframe. Updates Third Party Administrator database to reflect current disposition. Forwards file to Hearings Representative.

6. Upon receipt of Hearing Notice, Hearing Representative will contact UI Coordinator to determine whether representation is required and counsel witnesses accordingly. (See *UI Hearings Procedures*).

7. Upon receipt of Hearing Referee’s Decision, the Hearing Representative will process as follows:
   e) **Favorable Decision**: Database will be updated to reflect current disposition.
   f) **Unfavorable Decision**: Hearing Representative will contact UIC to discuss; if errors in Referee’s Findings of Fact warrant appeal to Commission level, Third Party Administrator Hearing Rep prepares appeal and forwards to the Commission in required time frame.

8. Upon receipt of Commission Decision, Third Party Administrator Hearing Rep notifies UIC, in the event an appeal to civil court is warranted. Database is updated to reflect final claim disposition.
EXPLANATION ABOUT UI HEARINGS

An unemployment hearing is the last opportunity for interested parties to present facts surrounding the issue, and may be requested by the claimant or employer. The hearing will either be held by telephone or in person at a local office of the ESC. Attendance at hearings will require appearances by interested parties, usually the claimant, the former supervisor, UI Coordinator and any pertinent witnesses. The Third Party Administrator is contractually bound to provide a representative to assist with presentation of the complex cases. The departmental UI Coordinator and the TPA representative will determine on a case-by-case basis if a representative is needed. Documentation that may be necessary to introduce into evidence for telephone hearings must be mailed to the Referee and to the other party at the addresses on the hearing notice.

Having witnesses with firsthand information at Referee Hearings cannot be stressed enough. Presenting documentation, without the author or witness present, is insufficient in the face of a hearsay objection by a claimant or his attorney. For this reason, if you are called upon to be a witness at an UI hearing, your cooperation is expected and encouraged. UI hearings have a great educational value, if for no other reason then to view firsthand how important your documentation procedures really are!

UI hearings are somewhat informal proceedings but should not be treated lightly. All that is necessary is to tell the facts as they occurred. Always behave professionally and answer any question to the best of your knowledge. As in any legal proceeding, testimony is given under oath.

What to expect at an UI Hearing
The Referee will:

1. Make a tape recording of the entire hearing;

2. Explain the issues the purpose and procedure he or she will use to conduct the hearing;

3. Introduce the documents in the hearing file into evidence, giving the parties an opportunity to examine the documents and identify them;

4. Explain the manner in which persons will testify and give rebuttal;

5. Assist parties in asking questions of other parties and witnesses;

6. Question parties and witnesses to obtain necessary facts;

7. Determine on his/her own motion or the request of a party if testimony and documents being offered should be received and considered; and

8. Take official notice of well-established matters of common knowledge and public record.
Witnesses will:

1. Be sworn in by oath or affirmation.

2. Be asked a series of questions by the referee and counsel, if present, about the separation.

3. Be subject to cross-examination by the claimant or his representative.

4. Proffer and describe documents (e.g. copies of warnings, handbook, etc.) to be introduced as employer exhibits.

3. Have the opportunity to rebut claimant’s evidence.

4. Have the opportunity to cross-examine the claimant (unless counsel is present to handle it).

7. Have the opportunity to make a summary statement in closing (unless counsel is present to handle it).

If it is possible for a witness with firsthand testimony to attend a scheduled hearing a **continuance** may be requested of the referee prior to the scheduled date. However, the commission has very strict rules concerning continuances, to which the referees must adhere. Generally, unless the request for continuance is due to serious illness of the primary witness the hearing will be held as scheduled.
UNEMPLOYMENT INSURANCE COST MANAGEMENT PROGRAM
UI HEARINGS PROCEDURES

1. Within 24 hours of receipt of a Notice of Hearing, the Hearing Counselor will contact the agency/university UI Coordinator. The following issues will be discussed:

   a)Review of the reason for separation and all facts leading to the separation.
   b)Name and telephone numbers of witnesses with first hand testimony who will be needed at the hearing.
   c)Documentation required for the hearing (original and two copies!)
   d)The time, date, place and type of hearing (telephone or in-person)
   e)Determine need for representation. In most cases, with proper counseling, a representative should not be required.

2. With approval of the UI Coordinator, the Hearing Counselor will then contact the witness(es) and counsel them as to the facts surrounding the case, which must be presented at the hearing in testimony, as well as with the presentation of documentation. The witnesses will also be advised as to hearing procedure and protocol. If the counseling may have reveals weaknesses in the witness or the case, which would require representation to ensure an effective presentation, a representative will be assigned and the UI Coordinator will be advised.

3. If a representative is required, the Hearing Counselor will forward the file to a Hearing Representative, contracted by.

4. The UI Coordinator must contact the Hearing Counselor or Representative immediately if a witness becomes unable to attend a hearing in order that a continuance may be requested.

5. The UI Coordinator must contact the witness(es) on the day before or day of the hearing to ensure attendance. Note: It is recommended that the UI Coordinator attend as many hearings as feasible to cultivate an understanding of the expectations and requirements. Remember - YOU are the UI expert for your agency or university!

6. Upon receipt of an unfavorable hearing decision, the Hearing Counselor will contact the UI Coordinator to discuss the case and determine the merits of an appeal to the Commission level.

7. If an appeal to the Commission is warranted, the Hearing Counselor will compose it and file it with the Commission. If the agency or university legal representative wishes to partner in this process because of litigation in other areas, the UI Coordinator should organize the necessary communications.
DEFINING COMPLEX ISSUES

“Resignations” which were forced, coerced, or suggested by the employer. These will usually become dismissal issues and throw the burden of proof on the employer. It is essential to inform the Third Party Hearing Counselor at the outset if these conditions exist, to properly prepare the case.

Dismissal for dishonesty or theft in cases where the employee denies the charge and “gray areas” exist in the documentation or available testimony. If the agency/university has solid documentation and witnesses, a representative should not be necessary.

Dismissal for absenteeism may require representation, depending on the documentation. If the documentation is incomplete a representative may be necessary. If the record shows the dates, reasons and reporting off of the absences, a representative should not be necessary.

Dismissal for “Improper Conduct” may require representation since no prior warnings are required. It would be important to show the seriousness of the act resulting in an immediate dismissal. If the agency/university has solid facts and the act is documented as one that would require immediate dismissal, no representative should be needed.

Dismissal for poor job performance usually requires large amounts of documentation. If this is the case, a representative may be needed to streamline the presentation as much as possible.

Dismissal for repeated rule or policy violations should usually not require a representative, as the documented warnings should naturally build the case. Representation may be required where the documentation is weak and depending on the severity of the violations.

Any case where there is advance knowledge that the claimant has an attorney would warrant representation.

NOTE: Cases involving voluntary resignations should not usually require representation. The claimants have the burden of proving that they have resigned “with good cause”, which means they did everything a reasonably prudent person would do and could do to protect the employment prior to leaving. Reasonable actions by a claimant would be (but not limited to):

- Informing a supervisor or department manager of work related problems the claimant was unable to resolve on their own. Then allowing management a reasonable time to try to resolve the problem.

- Requesting in writing a leave of absence, medical leave, transfer, etc.

- Requesting a reasonable change in hours or a reduction of hours to accommodate some specific conflicting personal situation.

If the claimant did attempt or act on any of the above, the case would become complex, and a representative would likely be recommended.
CLAIMS ACTIVITY REPORTS

Frequency and Purpose:
The Third Party Administrator provides UI Claims Activity Reports on a quarterly basis. The purpose of the report is to provide a summation and complete record of claim liabilities and most current disposition of each claim filed in the reporting period. The reporting period covered by the quarterly reports builds on the ESC’s fiscal charge period, resulting in a final annual compilation of all claims filed from August 1 through July 31 each year. The UI Coordinators are advised to share the final summary of potential liability with their budget offices and to use it as a reference for reconciliation of the Request for Reimbursement statement.

A report containing statewide information in Excel format is e-mailed to the OSP UI Specialist by the Third Party Administrator. The report is re-formatted for clarity by OSP, broken out by agency/university, and emailed to each UI Coordinator. The contents of the report are categorized as follows:

Report Description:
- **UI Account #** - The seven digit number assigned by the Employment Security Commission. (Note: Most of the agencies and universities utilizing Central Payroll for reporting of wage information have more than one account number.)
- **Fund/Agency Code** – The first digit of this code is to denote the fund source from which the employee’s wages were derived. This is the same fund from which the reimbursement for unemployment compensation should come. The remaining digits vary in meaning, but the primary usage of the coding is to identify a budget code, department, or location within an agency or university.
- **Name/Social Security Number, Name** – identifies person filing the claim and last 4 digits of the ss#.
- **Benefit Year Began** – The first day of the first week that begins the 52 consecutive week period for which a valid claim is filed.
- **Maximum Potential Liability** – The total amount that could be charged to the agency or university account.
- **Liability Removed** – The maximum cost savings attributable to claim disqualifications.
- **Remaining Maximum Liability** – The maximum liability chargeable after subtraction of the Liability Removed amount. (This should be totaled for the fiscal period and provided to the agency/university budget office for planning purposes.)
- **Reason for Separation** – The reason (derived from the TPA code listing) most closely corresponding to the information provided to the TPA by the UI Coordinator.
- **Current Disposition** – The most recent or final ruling on the claim by the ESC.
FINANCING, CHARGES AND REIMBURSEMENT

Methods of Financing UI Benefits

The State is a Reimbursing employer, which means that we can annually reimburse the ESC for benefits paid to our former employees, and are not subject to a quarterly tax payment. There are two types of reimbursement methods available through Employment Security law, both of which are utilized by State Government.

- **Straight Reimbursement** – Straight reimbursing employers repay the ESC exactly what their former employers received in UI benefits once per year. However, if an employee qualifies for benefits, these employers are going to be charged for their share of the benefits, regardless of the reason the employee separated.

- **Noncharge Reimbursement** - Noncharge reimbursing employers must repay the ESC the benefits received by former employees plus an additional 20% of the cost. However, these employers may be relieved of any charge liability if the employee separated for a disqualifying reason, regardless of when the separation occurred.

Charges and Reimbursements

The ESC’s fiscal year period for accumulation of charges and request for reimbursement is from August of one year through July of the next. After all claims have closed each fiscal year the benefit payouts for each individual are listed and totaled, and a Request for Reimbursement is prepared by the ESC for each employer account number. The reimbursements are due within 60 days of invoicing. Late payments are subject to penalties and interest, so each agency and university must give the highest priority to reconciliation of the statement and making payment within the time allowed.

Each year some charges appear for claims for which non-charging had been allowed by the ESC. The TPA contests these charges, requesting the ESC to review for accuracy. The ESC mails refund checks to the agency or university for any charges found to be in error.
RECOMMENDED PERSONNEL PRACTICES
FOR CONTROL OF UNEMPLOYMENT COMPENSATION COSTS

Hiring Practices:

1. Hire the right person for the job.

2. Contact the former employers in order to minimize chances of hiring an undesirable employee.

3. Prior to hiring, be sure that the individual is aware of the job responsibilities and working conditions. Misunderstandings as to job duties often have a direct bearing on the ESC decision concerning unemployment matters.

Part-time, or Limited Employment:

1. The completion of an employment application is an excellent time to determine if the individual is limiting his/her availability for work. If the individual is seeking only part-time employment, the application or a simple questionnaire should indicate the following:

   a) The days and number of hours that the applicant is available for work.
   b) The reason the applicant is limited to part-time employment.
   c) Availability for a permanent, full-time position, should an opening occur.
   d) Any other restrictions, such as prior notice needed by the employee when a job opens.

2. The questionnaire should be kept with the employee’s personnel records. In the event that the employee files a claim and availability is an issue, this documentation may be used to avoid unwarranted benefit charges.

Probationaries/Temporaries

Do not wait for the employment to end in one of these manners to remove an unsatisfactory employee you would otherwise discharge. Pursue the better alternative of cost control; warn the employee that continuing the undesired behavior is jeopardizing their continued employment and follow proper dismissal procedures and it may result in the individual's disqualification from benefits. Also, an employer may be relieved of charges for employees who are dismissed for poor performance within the first 100 days of employment.
Voluntary Quits

While none of the following actions are required in ‘employment-at-will’ situations, in the event an employing unit wishes to contest the receipt of unemployment insurance benefits by a former employee, the following considerations are offered. Although the burden of proving just cause rests with the claimant, it is advisable to document the circumstances surrounding the separation.

1. An employee should be requested to submit a written resignation, detailing the reasons for it.

2. An exit interview is an excellent way to document an employee’s reason for leaving. Also, it may help an employee with a problem in order to permit him/her to remain on the job.

3. It is typically recommended to permit an employee to work out a notice of quitting. This will prevent a dispute over whether the employee quit or was discharged. If you must ask an employee to leave immediately, paying the regular wage to the end of the notice period is advisable.

4. An employee leaving for health reasons and on the advice of a doctor is considered by the ESC to have been involuntarily separated due to health reasons. The employee will be considered eligible for benefits upon release of the doctor. Care should be taken to offer an alternative to quitting. A leave of absence, if the employee is eligible, or possibly a transfer to a position the employee is medically capable of performing, are two options that should be pursued.

5. A forced resignation, which allows the employee to resign in lieu of dismissal, can be a dangerous practice since it tends to cloud the true reason for separation. Since this is an involuntary separation, it must be substantiated that, in effect, the employee was discharged for misconduct in order to obtain a disqualification.
**Discharges**

If an employer wishes to contest the receipt of unemployment benefits by an employee who was dismissed for reasons over which the employee had control, the ESC will require that certain actions were taken prior to the employee’s dismissal. In order for an employer to achieve a full disqualification, a discharge must be for “misconduct in connection with the work”, which is generally defined as a deliberate and willful disregard of the employer’s best interest. The burden of proving *just cause* rests with the employer on involuntary terminations. The employee would not be disqualified in cases of performance problems when the employee is deemed incapable of meeting the necessary standards for the job.

Following are some reliable methods for meeting the responsibility of the burden of proof:

1. **Employee Handbook:**

   The use of an employee handbook is an excellent means of informing employees of the rules and regulations regarding the employment. It is important to let the employee know what you expect from him/her. From the standpoint of unemployment insurance cost control the handbook should address the following issues if a unit should wish to contest an unemployment claim of a former employee.

   a. Procedure to follow when reporting an absence or tardiness

   b. Sick leave and leave of absence policy

   c. Conduct that can result in warnings, suspensions or immediate discharge

   d. Notification expected from an individual when resigning

   It can be advantageous to obtain the employee’s signature acknowledging receipt of the handbook. When contesting a claim for unemployment benefits the receipt could be produced, if necessary, to refute an employee’s contention that he/she was not aware of the rule under which he/she was separated.

   If the employee handbook is not utilized, an alternate procedure is to post the rules and regulations on a bulletin board where all employees can read it. If it is not possible to post the rules, make employees aware of where the written policies are kept and provide access to them.
2. **Disciplinary Actions:**

The use of a progressive disciplinary system is not typically practiced in ‘employment-at-will’ situations. However, if an employing unit desires to contest an employee’s receipt of benefits, it is of the utmost importance to prove that the employee was aware that repeated violations of rules or policies would jeopardize his continued employment. Use of progressive discipline also provides management with the means to address performance and conduct problems and gives employees a fair chance to meet the employer’s expectations.

The effective use of warnings can possibly change a marginal employee into a desirable one. If not, the warnings can be the means of obtaining the employee’s disqualification for benefits if he/she is separated for misconduct. From the perspective of defense of a claim under Employment Security Law, the recommended disciplinary progression is:

a. Coaching - Make a note of the date(s) and issues discussed for later reference
b. First Written Warning - Note date(s) of infraction and specific details surrounding the incident(s)
c. Final Written Warning - It should be made clear that another incident could result in discharge

It is preferable that written warnings are on a specified form and the employee should sign the form in order to document the fact that he/she received the warning. If the employee refuses to sign or accept the warning, an assistant or other authorized third party should witness a reading and explanation of the warning to the employee and sign the document as a witness.

**DOCUMENTATION IS A KEY FACTOR IN MEETING THE EMPLOYER’S RESPONSIBILITY OF PROVING THE DISCHARGE WAS FOR JUST CAUSE.**

3. **Suspensions:**

A suspension, like a warning, is another disciplinary measure that can possible salvage a marginal employee. If not, a suspension can also be a means of obtaining an employee’s disqualification for benefits if he/she is separated for misconduct. If suspension is utilized, it is recommended that the employee should be notified of the suspension in writing, and the information supplied should include the reason for the suspension, and the inclusive dates.
Following are some examples of infractions for which the ESC would usually want to see evidence of a disciplinary progression as part of the employer’s proof of a discharge for misconduct:

a. Excessive absenteeism

b. Carelessness, negligence on the job

c. Repeated violations of general rules and policies

d. Repeated failure to follow instructions

e. Failure to follow reporting off procedures

f. Consistently out of work area without authorization

g. Inappropriate conduct (e.g., rudeness to citizenry, patients, clients, etc.; loudness or other disruptions of the workplace)

h. Chronic tardiness

i. Violation of safety rules

Following are examples of acts that may constitute grounds for immediate dismissal, in accordance with Employment Security Law, and as such would be considered misconduct. The employer must prove the act occurred, usually by providing irrefutable documentation or witnesses.

a. Acts of dishonesty (e.g., theft, falsification of records for personal gain, etc.)

b. Actions on the job that are specifically prohibited, such as fighting or consumption of alcohol or illegal drugs.

c. Deliberate and unwarranted refusal to obey instructions

d. Deliberate destruction of employer’s property

e. Immoral behavior

f. Abuse of patients, inmates, residents or other citizenry under custody of the state.
**Employee Terminations:**

In order to successfully obtain a disqualification from UI benefits, the following recommendations should be heeded.

1. Be certain that the final incident that leads to the decision to discharge is one that constitutes misconduct.

2. All facts should be reviewed before discharging an employee. The person ordering the separation should be certain to possess first-hand knowledge of the situation rather than acting on hearsay.

3. Act immediately following the final incident instead of allowing the employee to work after it occurs. If action cannot be taken immediately, consideration should be given to suspending the employee.

4. Inform the employee of the specific reason for his discharge, in writing.

5. Immediately following the termination of an employee, regardless of the reason, complete the appropriate separation form. Provide brief, but complete, explanations for terminations, whether voluntary or involuntary.

6. The separation information, with all supporting documentation such as warnings, suspensions, doctor’s statements, etc., should be retained in the personnel file for use in the event a claim is filed.