

Crafting an Effective Unemployment Tax Management Program

By *Tammy Mullin*

Tammy Mullin explains how to implement an effective unemployment tax management program, highlighting important components and considerations.

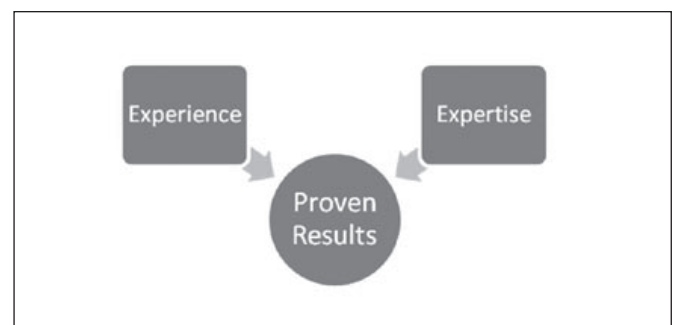
With tax rates rising across the country, it is now more important than ever for companies to integrate an effective unemployment tax management program into their corporate strategy. In fact, consider that the average charge for an unemployment claim is \$4,500. Your tax rate in most states is not only dependent upon charges to your own account, but is also

impacted by socialized costs as well. An example of a socialized cost would be unemployment benefits paid to former employees of a company that has gone bankrupt. So—is it important to have a strategy? Of course it is!

This article touches briefly on each of these components and highlights some important considerations when crafting a corporate strategy. I use the word “crafting” purposefully here because there is both an art and a science to all of this.

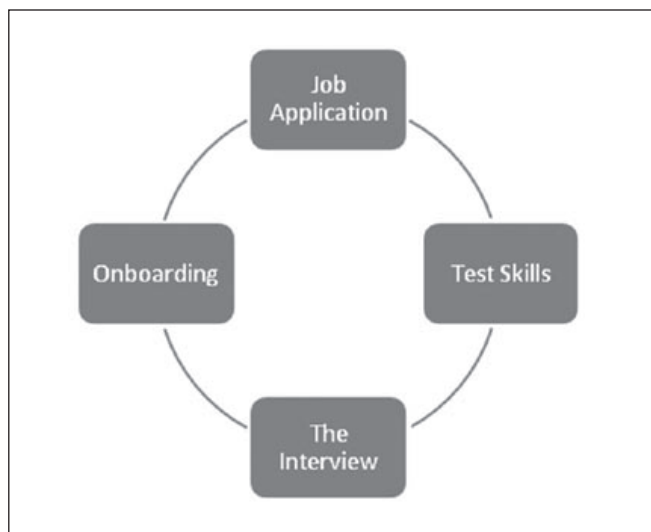
Whether establishing an in-house program or utilizing an outside vendor, the strategic team needs to have both experience and expertise in the area of unemployment. Expertise keeps efforts up to date on the rules and happenings at both the federal level, as well as in the states in which a company conducts business. Experience involves knowing how to utilize the intelligence gathered to get the best results. In the world of unemployment, experience and expertise lead to proven results.

Essential components of an effective tax management program include: Hiring; Claims Administration; Hearings; Benefit Charge Auditing; and Reemployment.



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Hiring



Making sure a company has the “right personnel fit” is absolutely essential and is the first line of defense in effectively controlling unemployment costs. Hiring an individual that is not well suited for a position may ultimately lead to their discharge, because they lack the ability to successfully perform their job duties. If this person files for unemployment, they would most likely be awarded benefits, resulting in potentially avoidable charges against the involved company.

Review the Job Application

Perform a careful review of the job application. Some general considerations include:

- Do the applicant’s work experiences and/or educational experience meet the requirements of the position?
- Was a reference check performed?
- Are there any unexplained breaks in employment history?
- Are the reasons for leaving past jobs clear?

Test Skills

The importance of testing applicant skills cannot be under-estimated in terms of making sure a company hires people who are capable of doing the job. If a job requires specific skills, develop a way to test these skills prior to hiring. Be sure the tests administered are valid and represent the actual content of the job. All tests should be uniformly given to all individuals applying for a position.

It is the hiring organization’s responsibility to find out as much as possible about an applicant’s abilities

and attitude before deciding whether or not to hire the individual.

The Interview

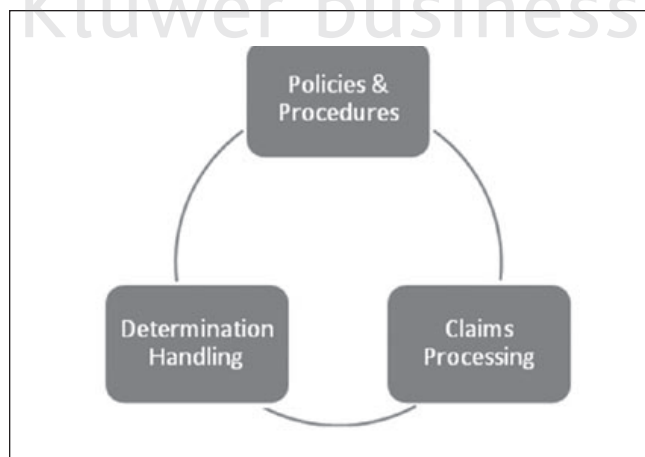
During interviews with potential employees, ask probing questions specifically associated with the job’s requirements; request detailed responses, not just “yes” or “no” answers. The goal is to evaluate whether the applicant is capable of, and willing to, perform the job requirements.

Onboarding

In spite of best efforts to find the perfect match for a specific job, a company may still find itself in the position of defending against an unemployment claim. When this happens, there is certain documentation essential for proving a case. Regardless of what policies are in place for the company, it is the responsibility of the employer to prove the claimant knew of these policies and agreed to abide by them. This can be particularly difficult for employers to prove when policies change over time.

Each organization must make sure that they have an employee handbook. It is imperative that all new employees receive a copy and sign an acknowledgment which confirms they have received the handbook, understand all policies and have agreed to abide by these policies. Similar acknowledgments should be required from all employees when policies change.

Claims Administration



An effective claims administration process requires attention to detail. Clear and unambiguous policies and procedures, combined with detailed documentation relating to employee separations

play significant roles in establishing a successful program geared toward keeping unemployment costs to a minimum.

Policies and Procedures

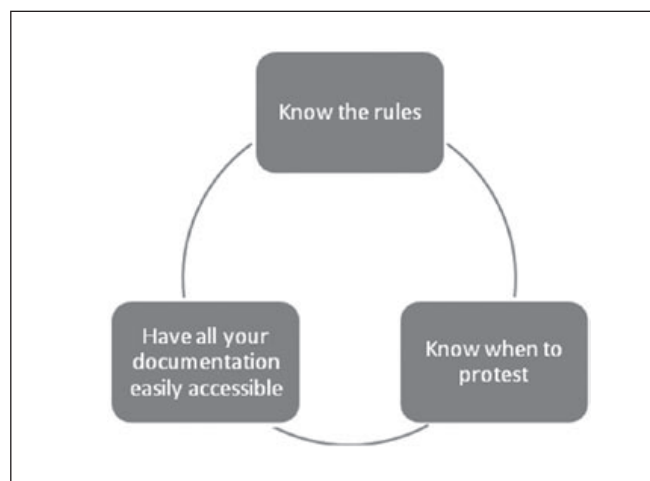
While a company's personnel policies are the key to protecting one's state unemployment tax account from unnecessary unemployment charges, it is not enough to simply have policies in place. A company's protection is ultimately determined by how violations are documented and enforced. All policies should be uniformly and consistently enforced. If an employee is terminated for violation of a rule not previously enforced by the employer, he/she may be found eligible for unemployment benefits.

A focused effort needs to be placed on documentation of personnel issues. Lack of proper documentation will lead to the payment of unnecessary claims. Some rules to follow include:

- Stick to the facts. Do not include derogatory remarks or personal opinions
- Record incidents as they happen, don't rely on memory
- If a verbal warning is issued, the employee does not need to sign respective notes, however, the incident must be documented. Outline actions needed to correct the problem and what will take place if the employee does not correct the problem
- Encourage an employee to acknowledge receipt of a written warning by signing it. If they will not sign, have a witness acknowledge the refusal.

Document, document, document!!!

Claims Processing



Claims processing is complex. Each state has its own rules surrounding response deadlines, eligibility and documentation requirements. Failure to comply will result in a lost claim. Knowing the rules and regulations in each state, understanding when it is appropriate to protest a claim and having all documentation easily accessible are all essential.

Experience and expertise can mean the difference between establishing an effective cost management program and simply pushing paper around in an effort to meet deadlines. Knowing the various rules is important. Understanding how to apply them is critical. A seemingly unimportant detail could have a significant impact on the tax rate for a tax paying employer.

Most employers would agree that the unemployment system was put in place to help workers who are unemployed through no fault of their own. However, there are always going to be situations where it is necessary to protest an unwarranted claim. When making the decision to move forward with protesting a claim, all emotion should be removed from the process. The employer representative needs to put aside personal opinions regarding who should and should not receive benefits and make their decision to move forward based on state rules.

Once the decision has been made to protest a claim, ensure all documentation can be easily accessed by the team who will be processing claims. Deadlines are extremely tight, involving days, not weeks. The trend for states these days is to require all necessary evidence be provided at the initial claim level. In many states, evidence that should have been made available when the employer filed its original protest will not be admissible for consideration at a later date.

The states often do not have a lot to go on when determining the validity of a claim. There is a lot of "he said/she said" that goes on in the process. One of the factors states can look to is the perceived credibility of the parties involved. Is the employer believable and ethical in their actions? Has the employer provided the documentation to back-up their statements? Does the claimant's testimony contradict this written evidence? States pay attention to which employers consistently file frivolous claim protests. No organization wants to be seen as an employer known for protesting claims unnecessarily.

Determination Handling

If an unfavorable determination is received, carefully review the facts of the case and decide whether

there is possible agreement with the state's findings. If an organization has a strong case that should continue to be pursued, submit a timely, written appeal to the state, along with any appropriate supporting documentation.

When an appeal is filed by either the employer or the claimant, the state will schedule an unemployment hearing in which witnesses for both the company, as well as the claimant, can offer testimony regarding the facts of the case.

Before filing an appeal, consider the strength of each specific case: Are there any firsthand witnesses? Is there documentation supporting the facts? If the necessary documentation or witnesses are not available to support a case, reconsider escalating the case to a hearing.

Hearings

Unemployment hearings are informal, administrative proceedings designed to be fact-finding and non-confrontational in nature. Though informal in nature, remember that the administrative law judge is responsible for gathering the relevant facts regarding the cause(s) of the former employee's job separation. There is often conflicting testimony and the administrative law judge will need to rely on his/her best judgment to determine who they feel is the most credible.

Unemployment hearings require first-hand testimony to the facts and/or events under consideration. Therefore, persons with direct knowledge of the issues that caused the job separation, especially those relating to the final incident, are needed to participate at the hearing.

While some states will permit hearsay testimony and accept notarized statements from non-appearing witnesses, this type of information is never sufficient to overcome direct, first-hand testimony from either the claimant or the claimant's witnesses.

For employers, all unemployment hearings begin with the same initial questions regarding the former employee's employment. The questions, though not apparently crucial to the final outcome, can establish or destroy witness credibility with the administrative law judge. The questions asked are:

- The former employee's position
 - Rate of pay
 - First date worked
 - Last day worked and last day employed, if different
- If a witness' testimony is uncertain or incorrect on these basic facts, the remaining testimony may be questioned as to its truth and/or accuracy and credibility.

Benefit Charge Auditing

Charge statements represent the state's accounting of benefits paid to former employees and confirm the amount that has been charged to an employer's unemployment account. They are sent to the employer on a monthly, quarterly or annual basis, depending on the state. The employer then has the opportunity to dispute charges to its account within a specified time period (again state-specific).

Believe it or not, the state can make mistakes like anyone else. An essential part of any employer's unemployment cost management program should include a process for checking and verifying

benefit charges. A few common mistakes to look for include:

- A hearing decision reversing a determination previously in the claimant's favor is received and the state does not issue credits due;
- Benefits are paid that should have been charged to a predecessor's or successor's account;
- The state has issued duplicate charges;
- Previous charges were protested and credits are due but the employer continues to be charged; and
- The individual is working for the employer and has earnings during the same period for which benefits were paid.

Reemployment

Although much attention is given to protesting unwarranted claims and invalid benefit charges, many employers do not pay much attention to controlling costs relating to non-contestable claims filed by former employees who are unemployed through no fault of their own.

Clear and unambiguous policies and procedures, combined with detailed documentation relating to employee separations play significant roles in establishing a successful program geared toward keeping unemployment costs to a minimum.

These claims, on average, account for more than 60% of the cost of unemployment. Though not contestable, costs can be reduced for these claims by controlling the duration of unemployment and therefore, the number of weeks these individuals receive benefits.

An employer can impact the duration a former employee receives unemployment benefits by providing the tools and assistance needed to successfully find subsequent employment. The key is to provide a program that incorporates one-on-one job coaching by a qualified job coach, along with a structured learning program that is tailored to the job seeker's needs and will help keep them on track and engaged.

Having an effective reemployment plan for separated employees can reduce the duration of unemployment by as much as third. The best part is that, in addition to implementing a program that often pays for itself in the form of reduced unemployment costs, you can have a positive impact on the lives of your former employees by assisting them in remaining gainfully employed.

Closing

As you can see, crafting a successful unemployment cost control program involves a “full circle” approach that begins with effectively hiring the right individuals for each job and closes with providing reemployment assistance to those who have become unemployed through no fault of their own. In addition, companies need to have clearly defined personnel rules and policies that are consistently followed and enforced. Detailed documentation of all infractions will enable companies to present the best case possible when defending against unwarranted unemployment claims and will also establish a reputation as an employer to be taken seriously by the various state agencies.

By following the recommendations in this article and incorporating them into every day processes, companies should be able to increase their success in winning protestable claims and reducing overall unemployment costs. At the end of the day though, it is essential to remember it is the experience and expertise of the individuals involved in the process that will lead to positive results.

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