

Best Practices Tip 2014

Hearing Process

Each state administers its own unemployment system and enacts rules regarding scheduling and participation in hearings. Since each state's unemployment laws differ from others, so do the rules regarding hearings. Here's a breakdown of the process:

Scheduling Hearings

Most states schedule hearings at least ten days from the date a hearing notice is mailed. Some states, however, schedule hearings only seven days after the hearing notice is mailed. Therefore, it may occasionally be necessary to arrange participation in a hearing with very short notice.

Hearing Venue

The "venue" of a hearing refers to how and where the hearing will be held. Most states hold hearings over the telephone, though some hold hearings primarily in-person.

Note: Workforce Solutions does not determine how a hearing is scheduled, the state determines the venue.

Hearing Representation

Most states will allow any professional representative to appear for a hearing with you. The representative will question witnesses, handle documentation, and cross-examine the claimant.

Workforce Solutions employs many professional representatives, with an average of 16 years of experience. It is occasionally necessary, however, to hire independent contractors as representatives due to the location of the hearing, or state laws or regulations.

States that limit representation only to attorneys licensed within the state

DE, MO, NC, SD, WV

- If you'd like a representative to assist with your case presentation, please contact your Unemployment Hearings Consultant (UHC).

States that schedule phone hearings

AK, AL, AR, AZ, CO, FL, GA, HI, IA, ID, IL, IN, KS, KY, LA, ME, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NM, OH, OK, OR, SC, SD, TN, TX, UT, VA, VT, WA, WY, US Virgin Islands

- All have rules which will allow parties to request that a hearing be scheduled in person, due to a range of circumstances.
- If one party requests an in-person hearing, the opposing party will generally be required to appear at the hearing location, absent extenuating circumstances.

States that schedule in person hearings at a hearing office

CA, CT, DC, DE, MA, MD, MI, NY, NV, PA, PR, RI, WI, WV

- All have rules which allow telephone participation in limited circumstances.
- If the parties are more than 50 or 60 miles from the hearing office, most states will schedule participation by phone.
- An in-person hearing is generally scheduled closest to the non-appealing party.

TIP: If a hearing is scheduled to be held in person and your witnesses are unable to appear at the hearing location, contact your Unemployment Hearing Consultant (UHC) immediately. It might be possible to request that your witnesses be allowed to testify over the phone instead, though some states impose strict time limits on these requests. Please be prepared to provide the name of the witness, why the witness is necessary to your case, and the reason the witness is unable to attend the hearing.

Evidence

The purpose of a hearing is to present evidence on the claimant's separation to the hearing officer. The hearing officer will decide if the separation is disqualifying under state law.

- The employer has the burden of proving that a claimant's discharge meets the definition of disqualifying misconduct.
- The claimant has the burden of proving that a quit is with good cause.

To meet your burden of proving misconduct, or to contradict a claimant's evidence in a quit case, it is necessary to present witnesses and documentation as proof.

- Witnesses who can provide first-hand evidence and testimony are required. A first-hand witness is someone who experienced an event himself, and who did not learn about the event from someone else.
- Anyone who testifies to information given to him by someone else about an event he did not witness himself is presenting *hearsay evidence*. Hearsay evidence can be easily overcome by a claimant's denial under oath at a hearing.
- Florida and Georgia have specific regulations which prevent a hearing officer from making a finding of fact based on hearsay evidence. If the only testimony about a final incident is hearsay, the hearing officers cannot find as fact that the incident happened, and therefore cannot disqualify a claimant based on that incident.

If you have questions about participating in a hearing, please discuss the case with your Unemployment Hearings Consultant (UHC). Your UHC can suggest witnesses and documentary evidence most likely to help you win your case.