

PRESENTATION

THE



EMPLOYEE

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EXPAND YOUR EXPECTATIONS™

# Roadmap for Today

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- Unemployment insurance – what it is and how it works
  - Federal
  - State
- The tax rate calculation
- Unemployment claims process
- Tips to avoid claims and negative ratings

# What Is Unemployment Insurance (“UI”) and How Does It Work?

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- Goals of Unemployment Insurance:
  - Pay benefits to workers when they lose their jobs through “*no fault of their own.*”
  - Promote economic stability by rewarding employers who minimize their workforce turnover, and by maintaining the flow of dollars through the economy even when there is widespread unemployment.

# UI By the Numbers

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- Unemployment insurance has kept 11 million people out of poverty since 2008.
- 69 million Americans either received or lived with someone who received unemployment benefits during the past five years.
- More than 60% of those who receive benefits are between the ages of 25 and 54.

Read more: <http://www.businessinsider.com/here-are-the-states-that-most-need-an-extension-of-unemployment-benefits-2014-1#ixzz34oAgkuhJ>

# How is UI Funded?

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- By employers
  - Through federal **and** state unemployment taxes.
- Federal Unemployment Tax Act (FUTA)
  - Imposes payroll taxes on employers based on wages.
  - The employer must pay the FUTA tax; do not withhold the FUTA tax from an employee's wages.
- State
  - Based on various factors.
  - In Georgia, the **employer** pays the cost of UI; employees pay no part of it and employers may not withhold tax from employees' wages.

# Federal Unemployment Tax Act (FUTA)

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- In his presidential message of June 8, 1934, President Franklin D. Roosevelt declared that the American people wanted "some safeguard against misfortunes which cannot be wholly eliminated in this man-made world of ours."
- In the summer of 1934, President Roosevelt created the Committee on Economic Security to draft legislation that would help alleviate the pain of the Great Depression and prepare for future economic downturns.
  - Resulted in the FUTA, which established the framework for a **joint state and federal** scheme of unemployment insurance

# What Does FUTA Do?

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- Authorizes IRS to collect Federal employer tax used to fund state workforce agencies
- Employers usually pay tax quarterly (if \$500 or more owed) and file **Form 940** annually
- Covers cost of administering the UI and Job Service programs in all states
- Pays one-half cost of extended unemployment benefits during periods of high unemployment
- Provides fund from which states may borrow to pay benefits if needed

# Which Employers Must Pay FUTA Tax?

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- Required to pay FUTA tax if either of the following:
  - Employer pays wages of \$1,500 or more to employees in any calendar year quarter *or*
  - Employer has at least one employee during any part of one day of a week during 20 weeks in a calendar year.
    - 20 weeks need not be consecutive
    - the “one employee” need not be the same individual
      - count all full-time, part-time, and temporary employees
    - the “calendar week” is a period of 7 consecutive days beginning Sunday and ending close of Saturday
- Once you meet **either** test you become liable for the FUTA tax ***for the entire calendar year and for the next calendar year as well.***

# FUTA, Cont'd.

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- The FUTA tax rate is 6.0%
  - Employer can receive a credit of 5.4%, which would make the FUTA tax rate 0.6%.
  - Entitled to the credit if you pay your state unemployment taxes in full and on time.
- Tax applies to the first \$7,000 paid to each employee as wages
  - Once the wages exceed \$7,000, employer has no further FUTA liability for that employee for the year.
  - This means the maximum payment, if the full credit is received, is 0.6% of \$7,000 = \$42 per employee per year.
- Used to finance all administrative expenses of the federal/state unemployment insurance system and the federal costs involved in extended benefits.

# State Unemployment Tax

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- Each state has a system that bases the tax rate on the amount of benefits the employer has paid to former workers.
  - Employers' state UI tax rates rise in direct proportion to unemployment claims of former workers.
- State unemployment tax rate is generally based on:
  - Amounts employers pay their employees,
  - Type and age of business, and
  - Unemployment claims filed against the business.
- State tax is used solely to pay unemployment benefits to qualified unemployed workers.
- State unemployment insurance remains the **only payroll tax** that **employers can control** by prudent human resource management and careful handling of UI claims.

# UI in Georgia - We're #1!!

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- October 2014 – GA has **highest** unemployment rate in the nation (7.7%)
- Atlanta metropolitan area at 7% unemployment
- July 2012 – GA cut UI benefits from max of 26 weeks to max of 14-20 weeks
- Oct 2013: 40,132 unemployment claims statewide vs. Oct 2014: 32,899 claims (decrease of 18%)
- Min WBA: \$44; Max WBA: \$330 (6-20 weeks)

# Georgia's State Unemployment Tax Act ("SUTA")

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- If an employer is liable for FUTA taxes, then it is liable for the GA SUTA tax
- Qualifying employers must file an Employer Status Report with GDOL to establish an unemployment insurance tax account
- Once account is created, GDOL calculates appropriate tax rate

# Georgia SUTA Tax Rates

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- Employers liable for tax on first **\$9,500** in gross wages paid to each employee during calendar year
- Private employers must pay taxes at specified rate on quarterly basis (“contributory basis”)
- Government and non-profit employers may elect either to pay on contributory basis or reimbursement basis

# The Experience Rating System

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- Assigned tax rates set by legislature; can vary year to year
- Tax rates calculated annually, as of June 30
- 2014 Tax Rates:
  - Minimum Employer Tax Rate – 0.02%
  - Maximum Employer Tax Rate – 5.4%
  - “New” Employer Tax Rate – 2.62%
    - Employers with less than 36 months of chargeability

# The Experience Rating System, continued

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- The basic idea:
  - ***Employers with lower unemployment costs earn lower tax rates***
- Bases an employer's tax rate on:
  - Employer's history of unemployment insurance taxes paid
  - Benefit charges
  - Average annual payroll

# The Math Behind SUTA

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## UI TAX RATE CALCULATION

$$\frac{\text{UI TAXES PAID} - \text{TOTAL BENEFITS CHARGED}}{\text{3-YEAR AVERAGE ANNUAL PAYROLL}} = \%$$

- Resulting % applied to state rate tables
- Additional factors added into computation

(See GDOL Employer Handbook, at p. 72 for detailed rate calculation information. Copy available at: <http://www.dol.state.ga.us/pdf/forms/dol224.pdf>)

# The Experience Rating System, continued

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- “Other” Factors Considered in Rate Calculation:
  - Timeliness of responding to requests for info from GDOL and sufficiency of response
    - **Three Strikes and You’re Out:** As of 10/22/13, if a GA employer or its agent does not “timely and adequately” respond to three or more individual claims within the current calendar year, account **will be charged** and employer may not be relieved of charges, regardless of whether determination is later reversed
  - Timeliness of filing quarterly/annual tax and wage reports
  - Delinquent taxes due
  - UI Trust Fund Balance
  - Administrative assessment of .08%

# Earning a Lower Rate

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- It's clear that a higher number of unemployment awards leads to higher experience ratings and higher tax rates
- So how do we keep the number of awards down?

Understand the unemployment claim process and how to successfully contest a claim.

# Who is the GDOL?

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- The Georgia Department of Labor is responsible for processing claims for unemployment compensation, making eligibility determinations, and paying out unemployment compensation to employees with successful claims.
- An employer can contest a claim for unemployment compensation, and has the right to three levels of appeal to an adverse determination.



# What is the Process?

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1. Claimant submits application for benefits to GDOL.
2. GDOL sends *Notice of Claim Filing and Request for Separation Information* to all employers potentially affected.
3. Employer provides separation information within **10 days**.
4. GDOL reviews claim to determine if claimant meets eligibility requirements.
5. If reason for termination is other than lack of work, Benefit Eligibility Review may be triggered.
6. Claim Examiner's determination mailed to all parties involved.
7. Employer or claimant may appeal within **15 calendar days** from date of determination letter.

# The Appeals Process

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- 1<sup>st</sup> Level of Appeal: Appeals Tribunal.
  - Filed within 15 days of initial determination
  - Telephonic hearing with the Administrative Hearing Officer. **This is where we get all of our evidence in.** (Testimony under oath, written evidence submitted – the whole shebang!)
- 2<sup>nd</sup> Level of Appeal: Board of Review.
  - Filed within 15 days of date of AHO determination letter
  - On appeal, absent extenuating circumstances, the Board of Review does not hear new evidence.
  - Instead, you are only able to argue that the AHO misinterpreted the facts contained in the first appeal transcript and/or misapplied the law to those facts.
- 3<sup>rd</sup> Level of Appeal: Superior Court.
  - Filed within 15 days of date of BOR's determination.
  - Again, they will only review evidence already in the record.

## How Do You Successfully Reduce Number of Claims Awarded?

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- Respond timely and adequately in **every** case, even when you don't intend to contest the claim
- If reason for separation is other than lack of work (i.e., voluntary separation for good cause or misconduct), make sure you provide clear explanation of circumstances surrounding termination and have back-up documentation to support it

## **Always Respond to GDOL's Request for Information**

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- Employer receives a notice of claim and request for information
  - You have **10 calendar days** to respond
  - Can provide notice that additional information is coming later
  - In the past, employers often would not contest or simply ignore claims
  - These “nonresponses” are no longer acceptable and can be very costly to the employer in the long run – remember **Georgia's Three Strikes Rule!**

# Contesting a Claimant's Eligibility for Benefits

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- Who Qualifies for Benefits?
  - Monetary Requirements:
    - Must have worked in at least two quarters of base period;
      - BP – first 4 quarters of 5 quarters preceding quarter in which claim was filed
    - Must have earned at least \$1,134 in the two quarters of base period in which earned highest wages;
    - Total wages earned during base period must equal at least 1.5 times amount earned in highest quarter; and
  - Must be able, available, and actively searching for work.
  - Must have a qualifying reason for separation from work.

# Qualifying Reasons for Separation

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- If employee is discharged or schedule reduced (partial claim) for lack of work.
- If employee is terminated for a reason other than “misconduct.”
- If separation is voluntary and for a good work-related reason.

Burden is on the party who initiated the separation to prove reason for term.

## Successfully Contesting Qualifying Nature of Reason for Separation

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- Reason for separation is primary area employer can exert control over outcome of benefits claim
- Two cases to focus on:
  1. Voluntary separation
  2. Discharge for misconduct

# 1. Voluntary Separation – Disproving Good Cause

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- The Standard: Claimant must show that he/she voluntarily quit for “good cause”
  - Cause “connected with work that would lead a reasonable employee who is otherwise interested in remaining employed to leave the job.”
  - Examples of “good cause”: demotions, loss of benefits, harassment.
- Employer should respond with evidence showing:
  - Claimant left while continued employment still available
  - Left for personal reasons unrelated to work
  - Reasonable person wouldn’t have left
  - Claimant left without giving employer opportunity to address work-related problem that led to resignation

# Typical Employer Mistakes in Voluntary Resignations

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- Failure to ask why employee is leaving
- Failure to obtain a resignation letter
- Combining adverse job actions
- Resignations result of “mutual agreement”
- Requesting resignation
- Designating No Call/No Shows as Terminations rather than Voluntary Quits

## 2. Proving “Misconduct”

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- What is misconduct as defined by the GDOL?
  - Something claimant did or failed to do that:
    - Exhibits a willful disregard of the employer’s interest(s);
    - Was in violation of a rule, policy, or law; and
    - Was within the claimant’s power of control to avoid.
- To prove misconduct, an employer must prove:
  - The claimant was fired for a specific act of work-connected misconduct that occurred close to the time of discharge; **and**
  - The claimant knew or should have known he/she would be fired for such a reason.

# Is This Misconduct?

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- *“Sally never seemed to grasp the job.”*
- *“John didn’t have the right skill set.”*

Does the employer win a finding of misconduct with reasons like these?

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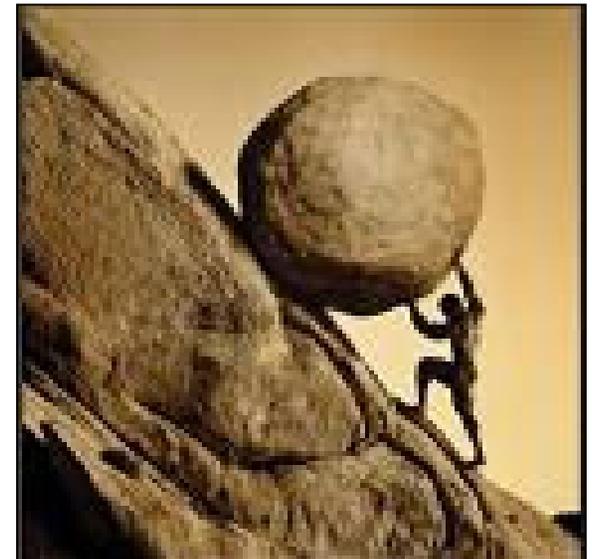
# No.

- Remember, mere inability to do the job is not misconduct – must show employee willfully and intentionally failed to do his/her best.
- Must be some fault on the part of the claimant.

# It's an Uphill Battle

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- It's important to recognize that the employer, not the employee, has the burden of persuasion as to the reason for discharge. Meaning, the DOL already has a presumption in favor of the employee.
- To meet this burden, the employer must be able to offer proof that the employee knew of, and understood:
  - (1) the at-issue polic(ies); and
  - (2) that violation of that policy could lead to termination.



# Separation Notices

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- This is the first document the DOL looks at.
- Pay close attention to the “reason for termination” that you put on the separation notice– Do you have the documentation to back up what is on the notice?
- Eligibility for benefits is determined based almost exclusively on the reason for job separation. If reason on notice appears to fall below “misconduct,” you’ll lose.

# Documentation Leading Up To Termination

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This is the second thing the DOL looks at.

## **Considerations for Employee Documentation:**

- (1) When disciplining an employee, especially with an eye towards termination, you must tie every disciplinary action to a policy in the handbook.
- (2) Performance evaluations should also include objective, not subjective, reasons for failing grades.
- (3) If the performance issue is not specifically addressed in the Handbook, you must engage in progressive discipline. This means: (1) written warning; (2) performance improvement plan (PIP); (3) follow up meeting to discuss progress on PIP; and (4) final written warning.

# PROGRESSIVE DISCIPLINE & THE TERMINATION DECISION

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When making the termination decision, ask:

- “Has the employee been warned? Coached? Given opportunities to improve? Most importantly, can we prove it?”
- ONLY if we can answer all these questions affirmatively should the employee be terminated.

# Typical Employer Mistakes with Misconduct Cases.

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- Failure to give a final warning prior to discharge or suspension
- Failure to follow stated disciplinary policy
- Firing employee for accumulation of incidents instead of one in particular
- Not acting fast enough – letting too much time pass between final incident and discharge
- Accusing employee of failure to satisfy general performance standards
- Failure to present firsthand witnesses and proper documentation

# Importance of Documentation

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- ***Document, document, document***
- Notifies employee of performance issues
- Can prove *misconduct*
  - shows employee violated company policy
  - shows employee received warnings but engaged in repeated violations
  - supports reason for termination
- Can prove employee voluntarily left
  - *E.g.*, resignation letters
- Could be used in later litigation for wrongful termination or other issues
  - Discrimination, Harassment, etc.



# Questions

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