



From the office of Texas Workforce Commission

Chairman Tom Pauken

Opinion/Editorial

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Texas Workforce Commission Upholds Fair Treatment for All Participants in the Workforce System By Tom Pauken

As Chairman of the Texas Workforce Commission, I appreciate this opportunity to address the issues raised in a recent *Houston Chronicle* article and editorial concerning our agency's Texas Business Conference in Houston. The editorial attributed certain statements to me which I never made. I appreciate your newspaper admitting that it made a mistake with a recent published correction. First, concerning remarks attributed to me, my comments came at the beginning of the day and addressed the business climate in Texas and the state of the overall economy. My remarks did not discuss what employers should, or should not, do concerning unemployment claims. My advice on employment law was limited to a recommendation that those in attendance listen to the speakers during the day and read the materials in the book *Especially for Texas Employers*.

More important to me, though, is that the employer community understand that our message is that the best way both to manage employees and minimize unemployment claim costs is to follow certain legal standards and best practices, as explained in our publications and during our conferences.

We often hear the popular myth that employees who quit are disqualified, while employees who are fired usually draw benefits. The real story is that each work separation is investigated on its own merits, and the claim and appeal process is designed to determine whether the claimant was or was not at fault in whatever type of work separation it was. It is a fundamental principle of unemployment compensation law that a resignation in lieu of firing is simply a discharge by another name. Presented with such facts in a claim, TWC will view that

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as an involuntary work separation, and the burden of proof will be on the employer. If the employer proves that the discharge was due to misconduct on the claimant's part, the claimant will be disqualified. Lacking such evidence, the claimant may receive benefits if otherwise eligible.

Finally, it is not the agency's position that employers should attempt to game the system by trying methods born of popular mythology as discussed above. Employers who make such attempts more often than not find themselves on the losing end of unemployment claims. The way to defend against unmeritorious unemployment claims is not by resorting to tricks, but rather by showing how the claimant was treated in accordance with known company policies after committing a specific act of work-related misconduct, and how the claimant either knew or should have known that discharge would result from such an act. Unemployed individuals may or may not be entitled to benefits – it all depends upon the facts of the individual cases. Those who were not at fault in their work separations and meet eligibility requirements are entitled to benefits, while those who became unemployed or remain unemployed through some fault of their own are not entitled to benefits.

Done right, the unemployment compensation system in Texas is a useful tool for workforce stability. The risk of chargebacks from payable claims encourages employers to manage their employees in such a way as to minimize the chance of unnecessary work separations by following Texas and federal employment laws, consistently and fairly applying known rules and standards, counseling employees when their performance or conduct is causing problems, maintaining proper documentation, and discharging employees only as a last resort. That is the message my office wants to send to employers.

Tom Pauken is the Chairman of the Texas Workforce Commission

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The Texas Workforce Commission is a state agency dedicated to helping Texas employers, workers and communities prosper economically. For details on TWC and the programs it offers in coordination with its network of local workforce development boards, call (512) 463-8556 or visit www.texasworkforce.org.