



# Unemployment Claims: Do You Really Want To Fight It?

Insights

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There are a lot of misconceptions regarding unemployment claims filed by recently-departed employees. This article will try to shed some light on them and help answer the common question: “Should we fight an unemployment claim?”

A recent state court decision from Oregon shows just how difficult it is for employers to prevail in such claims, and might lend you some guidance in answering this question for yourself. (The laws dealing with unemployment claims vary widely from state to state, but by and large all follow the same general patterns).

## One Employee’s Very Bad Day

Lisa Fox worked as a pharmacy technician for Kaiser Foundation Health for over 13 years until her termination in January 2013. On January 17, 2013, Lisa knew she was in for a bad day as she was perilously close to being late for work. Her company required her to clock in for her shift within four minutes of the start time of her shift, meaning she needed to clock in by 6:34 a.m. or face possible disciplinary action. She was already on notice of prior attendance violations, so she was frantic that morning and in a rush to get to work on time.

She drove her car into the parking lot, parked it in a loading zone near her building’s entrance, and dashed into the workplace to try to beat the clock. She breathed a sigh of relief as she punched in at 6:33 a.m., then

returned to the parking lot to move her car into a regular parking space. She arrived back at her work station at 6:36 a.m. to begin her work day. When her employer learned about this situation, it promptly terminated her employment for “time-card fraud,” concluding that she inappropriately got paid for several minutes while not actually performing any work, and had effectively lied about her true start time.

Fox filed a claim for unemployment benefits, which was initially denied by the Employment Department. She then appealed to an administrative law judge, who reversed the decision and granted her benefits. Kaiser then appealed that decision to the Employment Appeals Board, which overruled the judge and denied benefits. Lisa then appealed to the Oregon Court of Appeals, which issued a ruling in March 2014 saying that Lisa should be given one more chance to try to prove her case. In order to understand this decision, it is important to take a step back and understand the rules at play.

## **A Close Case**

The Oregon Employment Department, along with most employment departments around the country, allows individuals to receive partial compensation while in between jobs in order to help tide them over. But not everyone qualifies for these benefits. Employees who voluntarily quit aren't entitled to unemployment because they should have made plans for compensation before abandoning a paying gig. And employees who commit an act so reprehensible that anyone committing it would end up fired, also cannot enjoy the benefits because it's their own fault that they are without compensation.

If an employee punches someone, steals something, does drugs, or drinks alcohol at work, you can feel pretty comfortable that their benefits claim will be denied – but anything beyond that is tricky. The rules are fairly liberal in nature and allow employees to collect unemployment benefits even when they deserve to get fired, so long as their conduct wasn't "egregious" in nature. (again, different states use slightly different criteria, but you get the idea).

So an employee who screws up the job, continually shows up late, blows a critical presentation, loses a big account, consistently gets poor evaluations, forgets basic company rules, or just plain proves to be too un-skilled for the position, will probably still get benefits. And if the employee commits an egregious action but claims that it was "an isolated instance of bad judgment," the state – at least some of them – may give the employee a one-time pass and allow them benefits anyway (so long as the conduct wasn't unlawful in nature). That's just what Lisa Fox argued: that her "time-card fraud" was actually just a one-time screw up that should be forgiven.

The Oregon court didn't go so far as to agree with her, but it did say that the lower agency didn't properly examine her mental state when making its ruling. The appeals court said that whether a rule violation amounts to an isolated instance of bad judgment depends on not only the seriousness of the conduct but also the claimant's mental state when committing the act.

Here, Fox said that she made a “snap decision” while in a rush that morning, that she didn’t realize what she was doing would be considered “fraud,” and that she has time-management issues due to diagnosed attention-deficit disorder. All of these things, she said, should play into the decision in determining whether she should get benefits. The court agreed with that much, noting that the lower agency should take testimony and evidence about these issues before rendering a decision, sending the case back to them for further proceedings.

## **Drawing Conclusions About Drawing Unemployment**

So what lessons can employers take from this decision? In other words, should employers fight unemployment claims?

First off, as described above, you should understand that there is a very high hurdle at play to get an employee disqualified. More importantly, understand that unemployment claims aren’t referendums on whether the termination was justified or lawful. There might be a very good, non-discriminatory, well-documented, and supportable reason to terminate an employee, but that doesn’t mean that an unemployment claim will be denied.

So don’t feel the need to have to fight the claim in order to prove that you were in the right. But if you do decide to fight a claim, be sure that you take it seriously and not try to wing the hearing without preparation. Employers’ statements during the claims process are made under oath, so even though the ultimate decision might not impact a later discrimination or wrongful-discharge claim filed by the worker, the statements made during the process are going to lock you into a story. Do your homework and prepare as if you were in court.

The answer to whether you should fight an unemployment claim is “it depends,” but at least understand the risks and consequences should you decide to venture down that path.

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