



## When to Fight a Claim for Unemployment

■ ALAN A. AYERS, MBA, MAcc

**Urgent message:** While unemployment insurance claims can cost an urgent care center through higher future premiums, there are multiple considerations for when a center should contest or approve an unemployment claim.

Urgent care centers, as service businesses, frequently experience a high rate of turnover among frontline staff—eg, receptionists, clerks, and medical assistants. Whether an employee quits or is terminated for cause or performance, a common issue for urgent care center owners is determining in what circumstances an employee is entitled to unemployment compensation—and when an employer should contest an employee’s claim for unemployment.

One of the most compelling reasons to contest a former employee’s claim for unemployment centers on maintaining low unemployment insurance premiums in the future. The cost of just one claim may have a significant impact on the employer’s bottom line; the number of claims the employer pays out each year and its effect on the overall business give employers pause to consider fighting an employee’s claim for payment.

However, cost is not the only motivating factor for employers. This article will explore some of the other common reasons a company could decide to fight a claim, along with some of the rationales to resist this action.

### Background

The California Employment Development Department (EDD) has exclusive jurisdiction to investigate an employee’s claim for unemployment benefits and make an eligibility determination in that state.<sup>1</sup> An appeal of the EDD’s decision is heard by an administrative law judge.<sup>2</sup> A claimant may appeal that decision

to the California Unemployment Insurance Appeals Board<sup>3</sup> and, if still not satisfied, “may then seek a limited trial de novo in the superior court in an administrative mandate proceeding.”<sup>4</sup>

The California EDD, rather than the employer, has the authority to determine whether a former employee can receive unemployment benefits.<sup>5</sup> In California, terminated employees who claim unemployment benefits will receive the benefits unless the former employer contests the claim. Urgent care center owners in California have the option of contesting an employee’s application for unemployment benefits.

### Rates

When an employer first starts paying into the unemployment system, it is taxed at a “new employer” rate, based only on how many employees it has.<sup>6</sup> After a few years, the employer will be assigned an experience rating, which depends on how many of its employees have filed for and received unemployment benefits. The more unemployment claims against an employer, the more it will have to pay. A single unemployment claim can put an urgent care owner into a higher tax bracket.<sup>7</sup> As a result, some claims may be worth contesting, despite the fact that the urgent care center owner usually does not contest these claims.<sup>8</sup> If an employer believes a worker is not entitled to benefits, it may decide to file an appeal in order to keep its experience rating as low as possible.<sup>9</sup>

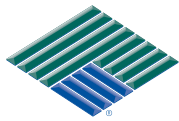
### Discussion

There are several reasons for an employer to contest a former employee’s unemployment claim. Some cases may be weaker than others, and urgent care center owners should thoroughly investigate each claim in order to understand what happened in each situation. Before contemplating an appeal of a former employee’s claim, the owner should be certain his or her managers handled the job termination appropriately according to the company’s written policies, and that the employee was clearly not entitled to unemployment benefits.

If an employee was laid off, the employer will have no basis



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to contest an unemployment claim. In addition, there are no grounds to contest the claim if the employee didn't engage in misconduct but was fired for another legitimate reason, such as poor performance, poor judgment, or his or her inability to learn new skills.

In addition to the possible increase in an owner's unemployment insurance rates, these are some of the most common reasons employers contest unemployment claims:<sup>10-12</sup>

*Misconduct.* In California, the EDD presumes that a terminated employee did not engage in misconduct that would disqualify him or her from receiving unemployment benefits, unless the employer contests the unemployment claim.<sup>13</sup> Given this standard, an urgent care center owner is prudent to contest a claim only if there are sufficient grounds, such as the employee engaged in serious misconduct or quit without a compelling reason. The owner should be prepared with a strong, practical reason to contest that claim. When an employee is found to have been engaged in misconduct, an urgent care center owner may elect to forfeit its right to contest an unemployment insurance claim in negotiation of a severance agreement—particularly if the fired employee may be litigious. In that instance, the company would agree not to contest his or her unemployment benefits in exchange for the former employee agreeing not to sue the company.

*Wrongful termination.* Another reason to contest a claim is when an employer is concerned that the employee has plans to file a wrongful termination action. The unemployment application process is a valuable undertaking to discover the employee's version of the facts, as well as an excellent opportunity to collect evidence.

*Illegal basis.* The employee's claim alleges an illegal basis for the termination. For example, if an employee was fired for poor performance but claims he or she was terminated for reporting sexual harassment by a manager, an employer cannot allow this to go uncontested.<sup>5</sup>

*Deterrence.* Some employers will contest a claim to act as a deterrent to other workers considering such action, even when they are not entitled to benefits.<sup>14</sup>

*Image.* Similar to the message that is sent to the current staff, there is the public relations side to consider. A business may appear unsympathetic to current employees or to the public if it aggressively contests unemployment claims, even when the business owner has a strong case.<sup>8</sup>

An urgent care center owner should consider the overall cost of mounting an appeal if a claim for benefits is granted. While higher unemployment taxes will have an effect on overall profitability, the same can be said for the effort it takes to contest an unemployment benefit award for a former employee.

### Contesting a Claim: Preparation

Prior to contesting an unemployment claim, the owner of an

urgent care center must collect all the necessary documentation, along with the facts of what transpired with the employee. Without a comprehensive file of evidence, statements, and documentation, an appeal is extremely difficult to win. For some facilities, unemployment claims may occur infrequently. As a result, the company must have a system in place to quickly gather relevant information. All urgent care centers should have policies concerning employment evaluations, terminations, and layoffs. Review the current policies to ensure accuracy and compliance with laws and regulations.

In addition, this investigation and documentation-gathering takes some time and effort, as well as the time lost participating in the hearing—all of which have a hard cost to the employer.<sup>13</sup>

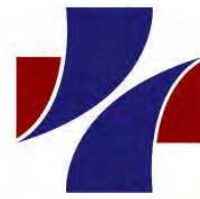
Lastly, in addition to all the considerations an urgent care center owner must make, it is important to point out that employers lose a majority of their appeals. According to the *Wall Street Journal*, employers won only 36% of the over 400,000 unemployment claims that they appealed in the most recent study.<sup>12</sup> This shows the importance of preparation and sound reasoning for making an appeal.

### Conclusion

Every claim for unemployment benefits must be considered seriously, with preparation completed long before any claim is filed.<sup>12</sup> Contesting a former employee's unemployment benefits can prove to be expensive and time-consuming. Further, success is not assured. Owners of urgent care centers should understand what is necessary to contest a claim and examine the overall status of their business before deciding to move forward. ■

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