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AN EMPLOYER'S GUIDE TO  
**WINNING**  
UNEMPLOYMENT  
CLAIMS

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# Introduction

As an employer, it's almost guaranteed that you will someday receive a state claim form, notifying you that a claimant has filed for unemployment benefits that may impact your company's unemployment tax rate.

Although there are circumstances where a claimant is justified in seeking these benefits, you should be prepared to protest unqualified claims. After all, successfully protesting a claim can protect your unemployment account from being charged unfairly.

Throughout the following pages, you'll learn how the unemployment process works, how to protest a claim, and best practices to ensure you're positioned to win.



## Application for Unemployment Benefits and Employment Service

### Identifying Information

(Include Initial, Last)

A. Social Security Number

B. Date of Birth Month Year C. Sex  Male  Female

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# What is unemployment?

**THE PURPOSE OF UNEMPLOYMENT IS TO PROVIDE TEMPORARY PARTIAL WAGE REPLACEMENT BENEFITS TO QUALIFIED WORKERS WHO ARE UNEMPLOYED THROUGH NO FAULT OF THEIR OWN.**

Unemployment supports the economic stability of employers who depend on consumer spending. It's funded mostly by employers who pay federal and state payroll taxes and provided at no cost to workers who receive the benefits, except in certain states.

## What unemployment is not:

- It's not Social Security.
- It's not an automatic entitlement.
- It's not a loan.
- It's not based on need.
- It's not intended to fully replace previous income.
- And it's not funded by any deductions from wages that the employee may have earned in most states.

Wisconsin created the first unemployment program in 1932, and it was created federally through the Social Security Act of 1935, which spells out the standards for state administration, employers, taxes, and laws to establish unemployment insurance. It's important to note, each state runs its own insurance program.



**When an employee is separated from an employer, who files the unemployment claim?**

- A. The employee
- B. The employer
- C. A third party, like the state

ANSWER: The employee



# FUTA and SUTA Rates

## UNEMPLOYMENT IS FUNDED AND TAXED AT BOTH THE FEDERAL AND STATE LEVEL.

Both the State Unemployment Tax Act (SUTA) and the Federal Unemployment Tax Act (FUTA) were created during the Great Depression as a way to improve the economy by providing aid to those who lost employment through no fault of their own.

### FUTA

As defined by the IRS, FUTA, "with state unemployment systems, provides for payments of unemployment compensation to workers who have lost their jobs."

FUTA is currently 6% of the first \$7,000 paid to each employee. However, most states receive a 5.4% credit, reducing the tax to 0.60%.



## Will my tax rate go up if an unemployment claim is approved by a state agency?

ANSWER: It depends. Your tax rate will not necessarily change immediately after the claim is approved. States have different procedures when it comes to tax rates and unemployment claims.

### SUTA

SUTA (also known as state unemployment insurance or SUI) requires employers to contribute a payroll tax to state unemployment funds. Rates vary by state, and several factors may be considered as part of the calculation, including:

- Social and experience rating
- Taxable payroll
- Employer account balance
- Benefit charges to the employer account

If a company operates in several states, SUTA taxes are due in each state where work is performed.

Most employers pay both federal and state unemployment taxes.





# Establishing Unemployment

In order to qualify for unemployment benefits, claimants must meet all of the following eligibility requirements:

**The claimant must be unemployed through no fault of their own, or working reduced hours.**

**The claimant must meet state monetary requirements.** For example, a claimant must've earned a certain minimum in wages (the actual requirement varies by state). To qualify for unemployment in Florida, the claimant must've earned a minimum of \$3,400 in the base period of their claim. Some states, on the other hand, require that the claimant must've worked a minimum number of weeks during the base period. For instance, Ohio requires at least 20 weeks worked during the base period.

**The claimant must also maintain:**

- Ability to work
- Availability to work
- Actively seeking work

Claimants may be temporarily disqualified for not meeting eligibility requirements for reasons such as:

- Receiving severance pay
- Not claiming weekly benefits
- Not meeting work search criteria
- Not reporting real earnings

However, these disqualifications may be overcome.

Each claimant must qualify under the terms of their state unemployment compensation, and each state has its own laws and regulations. Keep in mind, approval for unemployment benefits is not automatic, and not everyone qualifies.



## Can the employer deny an ex-employees unemployment claim?

ANSWER: No. Employers can't deny an unemployment claim. The state makes the determination.

# Determining the Weekly Benefit Amount

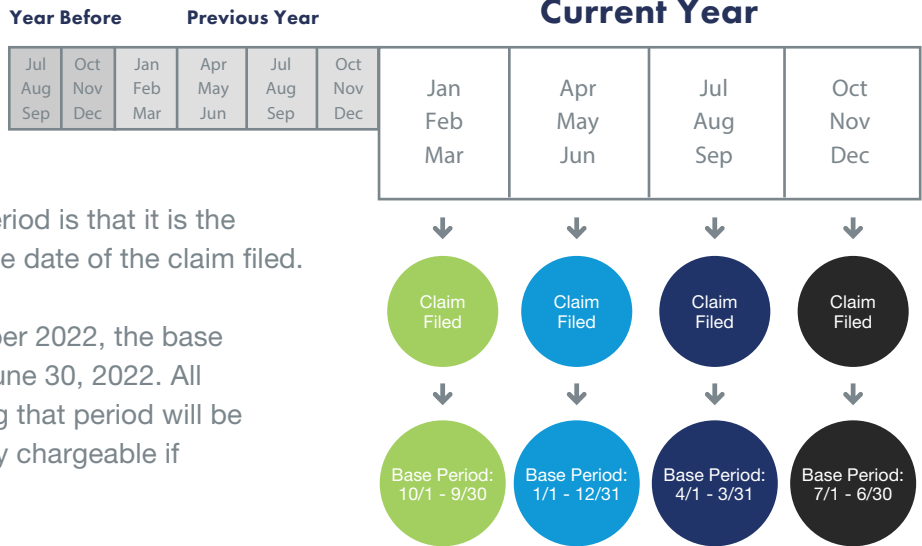


**THE WEEKLY BENEFIT AMOUNT IS THE MAXIMUM BENEFIT THE CLAIMANT MAY RECEIVE FOR EACH FULL WEEK OF UNEMPLOYMENT.**

States use the base period as the timeframe to determine the weekly benefit amount.

## What is the Base Period?

The **base period** is the first four of the last five completed quarters prior to the Benefits Year Begin (BYB) date. The benefit year begins when the claimant files a claim.



The simplified explanation of the base period is that it is the period that goes back 18 months from the date of the claim filed.

For example, if a claim is filed in November 2022, the base period runs from July 1, 2021, through June 30, 2022. All employers the claimant worked for during that period will be contacted by the state and are potentially chargeable if unemployment benefits are paid.

**A separating employer**, or last employer, is the employer for whom the claimant worked last before filing for unemployment benefits. This is usually only one employer. The separation reason from the separating employer will determine whether the claimant meets the eligibility requirements for unemployment benefits or not.

**A base period employer** is any employer who paid wages during the base period or in the past 18 months. The state will contact all employers that the claimant worked for during the past 18 months to determine the claimant's monetary eligibility and each employer's chargeability. Only employers in the base period are potentially chargeable.

The **weekly benefit amount** is determined by a state; for example the state takes the gross wages earned by the claimant during the benefit period (which is usually the prior year), divides it by the number of weeks worked during that base period, and multiplies that amount by 50%.

The weekly benefit amount is subject to state-imposed limits, and not every claimant receives the maximum weekly amount.

## An Example of Weekly Benefits

In Ohio, a claimant earned \$26,000 in the base period and worked 52 weeks.

$$\text{\$26,000 earnings} / \text{52 weeks worked} = \text{\$500 average weekly wages}$$

Because unemployment benefits are 50% of average weekly wages, \$250 is the weekly benefit amount available if all eligibility requirements are met in the state of Ohio.

Some states adjust unemployment benefit amounts for inflation, but others do not. For example, Alabama and Florida have not adjusted their unemployment benefits in many years.

# Unemployment Process Flow

The unemployment process begins with job separation. The reason for separation could be as simple as an employee being discharged due to lack of work or having their hours significantly cut.



## Initial Claim

Once an employee separates from an employer, the employee decides whether they will pursue unemployment and file a claim with the state. If a claim is filed, the state generates the claim form, which is sent to all employers that the claimant worked for in the past 18 months.

## Response

After gathering all details regarding the separation, the employer sends a claim response back to the state.

The state then uses the claimant's statements, as well as information provided by the employer, to make a decision. The decision is sent to both parties — the claimant and the employer.

## Appeals & Hearing

Each party has the right to file an appeal if they aren't satisfied with the state's decision. After the appeal, a hearing is usually scheduled four to six weeks later, but sometimes sooner.

## Referee Decision

Once the hearing officer completes a formal written decision, it is sent to the claimant and the employer.



## Board of Review

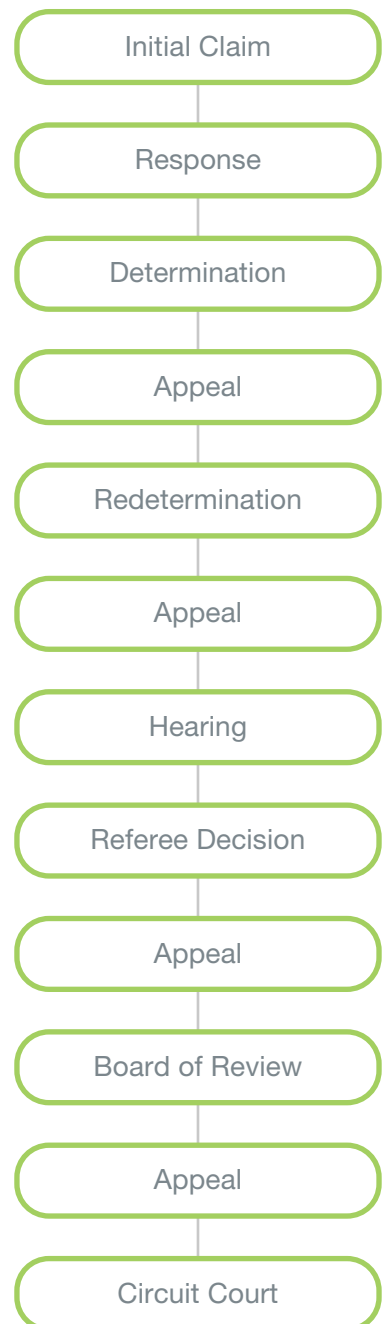
If the hearing decision is appealed by either party, a small panel of individuals known as the Board reviews the case in its entirety. The Board looks at all documentation in the file and listens to a recording of the hearing.

## Final Appeal

Unless new evidence is presented to the Board, a new hearing is not scheduled.

## Circuit Court

If the party receiving the unfavorable decision disagrees with the Board's review, the case may be appealed in the state court or a similar venue.





# How to Protest An Unemployment Claim

Unemployment benefits are meant for workers who have become unemployed through no fault of their own. Therefore, the reason for separation is a critical factor in whether a claimant receives benefits. Here are some of the most common separation reasons and considerations for protesting a claim.

## Voluntary Quit

When an employee voluntarily leaves their job, they are not typically eligible for unemployment benefits. In order to receive them, they must prove to the state that there was a good cause for quitting. The claimant will try to show that quitting was justified due to the employer's actions. For example, there was a change in schedule, initiated by the employer, that forced the employee to quit.

In order to win a voluntary quit case, the employer must focus on providing evidence that the claimant did not have a good reason for quitting.

### The employer should provide:

- The hire date and the last day worked
- The reason that was given by the claimant for leaving the job
- Was this notice given verbally or in writing?
- Any documentation that the employer has.
- Was notice given?

This could include a copy of the employee's resignation letter or a copy of resignation notes, as well as a copy of an exit interview if one was conducted.

## Lack of Work

When an employee is separated from their last employer because there was not enough work to justify the position or work hours were severely cut, they are eligible for unemployment benefits. Employees that are laid off are unemployed through no fault of their own and will typically receive unemployment benefits provided they meet eligibility criteria. There is generally no reason for an employer to protest such a claim.

## Discharge

In most cases, when an employee is fired for misconduct by their employer, they are not eligible for unemployment benefits. However, if they decide to file an unemployment claim, the burden of proof falls on the employer to prove that the claimant was discharged due to misconduct.

In order to win a discharge case, the employer must show documentation to prove misconduct, whereas the employee will claim they were fired without proper cause.

### The employer should provide:

- The hire date and last day worked
- The details of the final incident that caused the discharge
- Documentation
  - All verbal or written warnings
  - The company policy that was violated (Do not provide the entire handbook, just the excerpt of the policy violated)
- Any witness statements

If an employer is successful in protesting a claim, it could result in the claimant being disqualified from receiving unemployment benefits and the employer's account not being charged.



## Misconduct Vs. Inability to Work

It's important to understand the components necessary to successfully demonstrate misconduct. The bar is high and involves a deliberate violation of company policy.

Inability to work, on the other hand, is another potential reason for employee discharge, but it doesn't require intentional rule-breaking. Let's compare the two.

Misconduct is a deliberate violation of a written or implied company policy that may disqualify a claimant from receiving unemployment benefits.

### The three necessary components to prove misconduct are:

1. The employee must be aware of the rule or company policy. Policies should be discussed at the time of hire and on the initial employment application. They should be outlined in the company's handbook that the employee signed, acknowledging that they understood the employer's policies. The policies should also be referenced through written corrective action warnings that are signed by the employee.
2. The employer must demonstrate that the employee knew their job was in jeopardy through verbal or written warnings. Warnings to the employee can be delivered verbally during counseling sessions with a witness present and should be documented. Warnings may also be communicated in writing. The employee should sign the bottom of each corrective action warning received.
3. The employer must show that the employee had control over the final incident that caused their termination.

### Some examples that demonstrate that the employee had control over the incident include:

- Excessive unexcused absenteeism
- Excessive unexcused lateness
- Violations of company policy
- Not following their supervisors' instructions
- Not following proper operating procedures
- Insubordination
- Unauthorized possession of company property

It's very important that the employer provide written documentation to substantiate misconduct, including policies, acknowledgments, warnings, written statements, etc.

The employer must demonstrate the actions of a claimant in a discharge case constitute a "willful and deliberate" disregard of the standards. If the claimant can prove they did everything in their control to attempt their work satisfactorily, the claimant's actions will not be seen as willful or deliberate misconduct.



## To Protest or Not?

Employers may choose not to protest an unemployment claim when they have another legal claim against the employee, such as a criminal case, or when the employee brings another legal case against the employer.

It's important to keep in mind that the information presented in the unemployment claim is public. This means the claimant will have the right to see the employer's documentation provided in response to the unemployment claims office. This could expose information relevant to other litigation proceedings.

## Some examples of misconduct are:

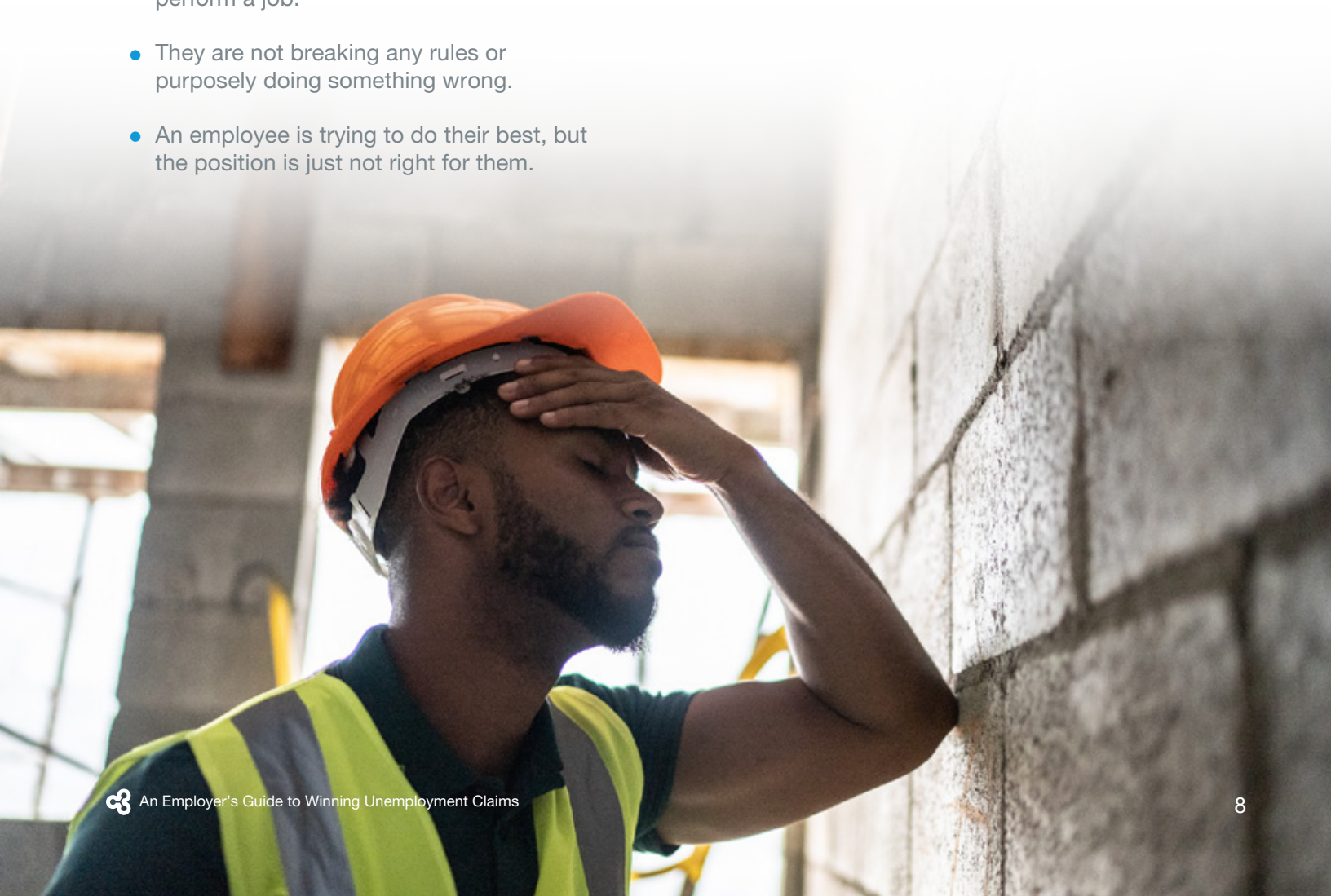
- Violations of local, state, and federal laws
- Claimants' actions that cause injury to another person
- Violations of a company policy after prior warnings

Inability to Work means that the employee could not perform their job, which would not disqualify them from receiving unemployment benefits.

“Inability” in an employment case generally exists when an employee was hired to do a job, and for whatever reason, cannot grasp how to perform their duties. It also includes employees who were able to perform a job up to standard in the past, but because of functional changes to the job, are no longer able to meet performance standards.

## Inability is when:

- An employee cannot grasp how to perform a job.
- They are not breaking any rules or purposely doing something wrong.
- An employee is trying to do their best, but the position is just not right for them.



# How FrankCrum Assists with the Protest Process



First, a FrankCrum team member contacts the client for details on the separation. Then we compose and submit a protest response on their behalf. In most states, responses are mandatory on an initial claim, and missing deadlines could result in benefits being awarded and appeal rights forfeited.

## The state's decision is based on:

- The separating employer's response
- The information supplied by the claimant
- Minimum eligibility requirements

Once the state issues a determination, FrankCrum reviews the determination or redetermination, depending on the state, before the hearing is granted. The team reviews the information, follows up for additional information, and then files an appeal on behalf of the client.



### State Issues Determination

- Review Information
- Follow up with additional information
- File an appeal



### State Issues Redetermination

- Review Information
- Follow up with additional information
- File a request for an unemployment hearing

Next, the state sets the date and time for the hearing. This is the client's final opportunity to present the details of the case. FrankCrum reviews and files additional information as needed.

The Claims Specialist will call the client's witness(es) to prepare them for the hearing and then attend the hearing along with the client. At the hearing, the Claims Specialist examines and cross-examines witnesses.

Once the state issues a hearing decision, the FrankCrum team reviews it and contacts the client to discuss the outcome and to decide whether to file a request for Board review.

If the client decides to move forward, the state will review the case and issue a Board of Review decision. The FrankCrum team will discuss the outcome with the client and determine whether they want to seek a final appeal with the Circuit Court. This requires the client to obtain their own legal counsel.

## Timely Communication Of Separation

In order to provide the best possible service to FrankCrum clients, we ask them to promptly provide separation information to their payroll coordinator, including

- The last date worked
- Termination date
- Reason for separation
  - Use MyFrankCrum.com or the Separation Form
- Include supporting documentation

The client must also be sure to respond to the Claims Specialist's request for information by the due date provided. If unable to respond by that date, they should notify their Claims Specialist as soon as possible.





# Best Practices for Winning Unemployment Claims

An employer's ability to avoid or win an unemployment claim often comes down to their daily processes and procedures. Following best practices for company policies, documentation, corrective action, and termination help ensure that employers are well-positioned should a time come for legal proceedings.

## Company Policies

Whether we like it or not, policies are important to the well-being of companies and their employees.

Company policies provide the employer an opportunity to formally lay out rules and expectations. They can be referenced during employee coaching and corrective action as a way to help improve performance, and with a separation to make the cause clear.

Without company policies, it's far harder to prove when an employee's actions run afoul of what's in the company's best interest.

When managing unemployment claims, companies with current and comprehensive company policies have an upper hand.

## Documentation

The success or failure of an unemployment claim often relies on what has been documented and what can be proven.

### How To Provide the Best Documentation Possible:

- Document incidents as they occur
- Document all details related to the incident, no matter how small
- Document the final incident when it occurs

- Document the policy that was violated and the next steps when dealing with corrective action, including steps required for performance improvement

And if someone quits through a verbal resignation, you need to ask them to put it in writing as documentation.

### Documentation Guidelines: Use FOSA

<b>Facts</b>	What, when, where, who
<b>Objectives</b>	Define Expectations
<b>Solutions</b>	Determine the best course of action-
<b>Actions</b>	Consequences

### Here's an example of FOSA in action:

**Facts:** Alex was late for his shift on Monday, Tuesday, and Wednesday by more than 20 minutes, and he didn't call or text his supervisor.

**Objectives:** Alex should be at work on time, and if he's going to be late, he should call or text his supervisor to meet the expectations of the company policy.

**Solutions:** Alex could get up earlier or leave home earlier to better handle any traffic delays.

**Actions:** Further corrective action may occur if Alex doesn't meet the expectations of the company attendance policy.



# Case Study



Eva is an employee who's worked at Acme company for six months.

She started off well and would be hard to replace. Lately, she's been ignoring work requests and speaking down to her co-workers. Her supervisor spoke with her about this before, and while her behavior will improve for a short time, she reverts back to her old ways.

Her co-worker Anthony recently complained that Eva gave him an Excel spreadsheet this week that was riddled with errors.

## What should be documented?

- Document what's been happening.
- Document the incidents of Eva ignoring work requests and speaking down to co-workers.
- Document conversations with her about her behavior.
- Document her improvement and that she can do it, but instead reverts back to poor behavior. (It is not a case of "inability.")
- Document training or retraining if applicable.
- Document the conversation with Anthony regarding his complaint about the spreadsheet that Eva gave him that was full of errors and what the mistakes were.

If HR hasn't been involved, now is the time to engage them.

## Corrective Action

The professional handling and documentation of corrective action can become critical in the unemployment claims process. Employers need to demonstrate that they gave the employee an opportunity to improve instead of dismissing them for one small mistake.

Employers use corrective action to improve unacceptable behavior or performance and to retain employees whenever possible. The process of corrective action best ensures equitable treatment and a sense of fairness and helps to protect the company and the individuals who lead it.

To learn best practices for addressing employee behavior, please review the FrankCrum ebook, *Correcting Course*. Below is a brief overview.

### When to Use Corrective Action

- When there's a serious or ongoing problem that needs to be addressed.
- When expectations have been clearly communicated, and the employee knows or should know what to do or what not to do. Policies are clear, job duties are defined, and necessary training has been provided.
- When it's timely. Take action soon after the behavior, not weeks or months later.
- When previous coaching and corrective action efforts haven't succeeded, so you're moving toward more serious and formal consequences.

### Corrective Action Steps

1. Identify the problem. What is the situation?
2. Determine the corrective action you're going to take.
  - Verbal warning
  - Written warning
  - Leave of absence
3. Whether it's a verbal or written warning, document it and be transparent in your communications.
4. Meet with the employee and follow up in order to help them improve.

Termination of employment is the final option for corrective action. You can reach out to your FrankAdvice HR Consultant for guidance on corrective action steps.





## Termination

It's crucial to plan ahead for the termination meeting. It's probably going to be a difficult conversation, and how the firing is handled matters.

### Pre-Meeting

Before the meeting, gather the facts and review the documentation as well as the employee's personnel file. This will help you avoid mistakes like scheduling the termination meeting on the employee's birthday.

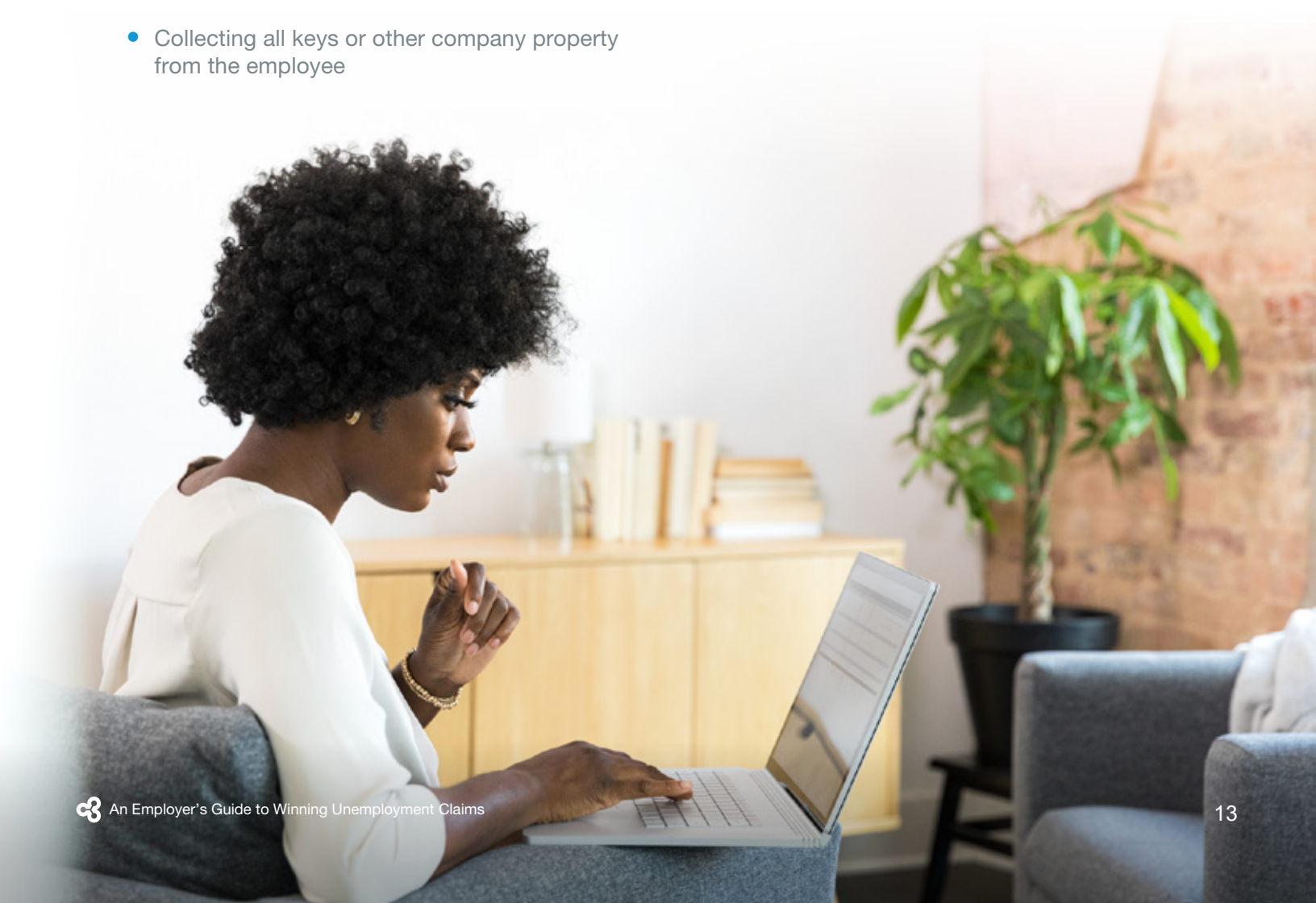
### Think about logistics.

- Date
- Time
- Having a witness
- Any potential security issues
- Ensuring you turn off the employee's IT access
- Personal belongings the employee may need to collect
- Collecting all keys or other company property from the employee

If you need to terminate a remote worker, tell them that a private meeting is necessary. For example, if you're in one state and the worker is in a different state, you will have to hold the meeting virtually over a video call or on the phone.

Using a termination checklist is a good idea. Often, there are state laws to consider with terminations. Consider the following:

- When do you have to provide the last paycheck? (Sometimes it's sooner than the next payday.)
- What will be paid out for banked PTO?
- Some states require you to provide the employee with an unemployment form; these states include California, Georgia, and Tennessee. There are also a couple of states that require you to give the departing employee a form about unemployment insurance.



## The Termination Meeting

Now that you've gotten to the termination meeting, here are some things to keep in mind.

- Anticipate the employee's reaction.
- Consider how you would like to be treated if you were in the employee's situation.
- Have the meeting in private.
- Keep the meeting brief.
- Be compassionate, but don't say you're sorry if the person is being fired for poor performance or conduct.
- Remain calm and handle the emotions that arise during the meeting – both yours and the employee's.
- Provide information on their final paycheck, health benefits, and COBRA.



If someone is being laid off or losing their job through no fault of their own, you may talk about unemployment benefits, but if the separation is due to misconduct or poor performance, you can refrain from discussing it. If the employee asks you, you can tell them they can apply, but that it's up to the unemployment officer if they receive the benefit.

## Post-Meeting

After the meeting concludes, be sure to complete the following:

- Transcribe your notes, put them with other documentation, and notify the team.

*Example: "Today was Jessica's last day. We wish her the best of luck. Any questions on work, come see me or Malcolm, her supervisor."*

- Terminate the employee in the system or fill out the form so that the individual is terminated and not showing as still working and receiving a paycheck.
- Follow up on any remaining logistical items and be ready if an unemployment claim is filed.





# Real-World Unemployment Cases

TAKE A LOOK AT A FEW REAL-WORLD UNEMPLOYMENT CLAIMS CASES BELOW AND EXAMINE WHAT WENT RIGHT AND WHAT WENT WRONG.

## An employee voluntarily walks off the job.



### Claim Overview

The employee was on assignment and walked off the job without notifying or advising anyone of issues at work. They filed an unemployment claim, and the employer responded. The claimant was denied unemployment benefits.

### What went right?

The employer provided a signed policy that specifically states if an assignment ends, the employee needs to contact the employer to advise of availability for future placement. The claimant is the moving party and would have had to justify why they abandoned employment.



## An employee voluntarily quits to take another job.



### Claim Overview

The employee told the employer that they were quitting for another work opportunity. However, they filed an unemployment claim, and the state ruled that the claimant quit without a just cause.

Subsequently, the claimant filed an appeal and was allowed unemployment benefits.

### What went wrong?

Even though the state originally ruled in favor of the employer, the initial decision was overturned because the employer did not respond to the hearing notice or attend the unemployment hearing.

This happened because the person who received the hearing notice was not the claimant's manager. They simply disregarded the notice, and no one from the company attended the hearing.

The employer should have a designated person that responds to and manages all unemployment benefit matters, so they can direct the mail to the correct person.

## An employee violates company policy.



### Claim Overview

The employee was in a position of authority, entrusted by a property owner to monitor a residence while the owners were out of town for an extended period of time. The final incident occurred when another resident of the property called the police and complained that there seemed to be illegal activities occurring at the residence. The police responded and conducted an investigation determining that the employee had conducted illicit activities at the property he was entrusted to care for.

The police report detailed that the employee admitted to the allegation and was advised that his employer would be made aware. The employer then took action by suspending the employee, pending their own investigation.

The employer's investigation revealed that the allegations were confirmed. No criminal charges were pressed at the time of the incident, but the employer decided to contact an attorney who drafted a termination letter, citing the reasons for discharge.

The former employee filed an unemployment claim.

The employer responded with documentation of all the above-mentioned facts, and the claimant was denied unemployment benefits.

### What went right?

The employer obtained credible documentation from the law enforcement agency. They consulted with a business attorney and drafted a concise termination letter.

The employer completed an investigation regarding the allegations and provided the state with all the supporting documentation, such as company policy, policy acknowledgement by the claimant, and all the investigative documentation.

## An employee is discharged for insubordination.



### Claim Overview

In this case, the employee was terminated for insubordination. The employer advised that the claimant had been warned multiple times about removing company property.

The final incident occurred after the claimant removed company property on a Saturday. On Sunday, the company needed the property, and the claimant returned it within hours. However, on Monday, the employee was discharged by the employer.

The claimant filed an unemployment claim.

The employer's response was provided to the state, but the claimant was awarded unemployment benefits.

### What went wrong?

The company did not have a policy for this situation. If there is no policy, it is almost impossible to prove any wrongdoing. There is no way to demonstrate how the employee would know not to remove the company's property.

Additionally, there was no record of verbal or written warnings to the employee.

Legal Notice – The purpose of this information is to assist in the discussion of risk, concerns, and general requirements. It is not tax advice, legal advice, or judgment of a business's compliance or non-compliance. It is recommended that you seek qualified legal counsel familiar with your particular circumstances before taking any action

# Why FrankCrum

Although FrankCrum clients appreciate our long and successful track record, financial stability, technology capabilities, and the wide range of services we offer, what we hear most often is that they appreciate being able to speak with a live person who gives them straight answers to what may sometimes be difficult questions.

That's the way we do business - one person at a time, one client at a time. It's literally part of our DNA as the FrankCrum family of businesses: what we call "A Family of Employer Solutions."

Our company history began in 1981, when Frank W. Crum, Jr. and his father started offering temporary staffing services, with a deep commitment to the success of business owners. Because of that commitment, we have expanded our professional offerings over time as clients partnered with us to help them grow.

Today, that family of businesses - still owned and operated by Frank Crum, Jr. and now his son, Matt and daughter, Haley - offer HR services through FrankCrum PEO, workers' compensation and general liability insurance through Frank Winston Crum Insurance and staffing services through FrankCrum Staffing. You'll find the same operational philosophy in all three companies; Frank refers to it as "doing the right things for the right reasons."

It boils down to this: Running a business can be hard. Managing your human resources program shouldn't be. Let us know how we can help.

**To learn how FrankCrum can help your business,  
call 800-277-1620 to schedule a consultation**

