UNEMPLOYMENT COMPENSATION APPEALS

IN THE DISTRICT COURTS OF APPEAL

Section I

Summary of the Process

Unemployment Compensation Appeals in the District Courts of Appeal

Appeals to a District Court of Appeal (DCA) are usually the last step in a sequence of administrative events. For purposes of this summary, you can assume that a former employee (the "claimant") without an attorney (and without the resources to pay for an attorney) is either (1) the appellant seeking reversal of an adverse order from the Florida Unemployment Appeals Commission (FUAC), or (2) the appellee seeking affirmance of a FUAC order in his or her favor, with the employer as appellant.

Unemployment compensation is a public benefit payable under Chapter 443, Florida Statutes. An unemployed person who has been denied this benefit and is also unable to obtain other employment is normally in a desperate situation. She or he may also be facing eviction, mortgage foreclosure, auto repossession, and other calamities. Groceries, and not the retention of an attorney, may be the top priority.

The claims process seems daunting to someone who is not an attorney. To a second or third-year law student, or to an attorney, it is straightforward. Here is a summary of the steps:

1. The Claim. The unemployed claimant files a claim with the "Agency for Workforce Innovation." The Agency reviews the claimant's pay history and

eligibility. The Agency provides active assistance to the claimant in preparing and filing the claim through a neighborhood office or its on line site; see http://www.floridajobs.org/unemployment/. In the cases brought to the DCA, ordinarily the claim has been approved and paid for some period. The claimant receives a modest weekly benefit payment check, and he or she must continue to be available for re-employment. The Agency attempts to help the claimant identify a new job, and a new full-time position normally terminates the weekly unemployment compensation payments.

2. Objection. When employers are notified that benefits are being paid to a claimant/former employee, they are motivated to consider whether an objection to the claim may be warranted. The payment of benefits to a former employee will affect adversely the employer's claim history and normally will upwardly adjust the quarterly unemployment insurance the employer must pay the State. Also, the employer may know that the former employee was fired for misconduct, or that the former employee voluntarily left the job for reasons of his or her own. The employer is allowed to submit information on these topics to the Agency, which may then determine that the claimant is not eligible to continue receiving the benefits. If the Agency finds merit to the employer's objection, a new determination letter is issued denying the payment of further benefits, requiring repayment of benefits paid, and notifying the claimant of the right to

appeal. If the Agency finds no merit to the employer's objection, the employer receives a determination letter to that effect and notice of the employer's right to appeal.

3. If the claimant or the employer files a timely administrative appeal [again, the instructions are online and the twenty-day period for filing begins to run from the date the determination is mailed, not the date it is received; but see the Baker case, attached, regarding the burden of proving mailing date], the Agency's Office of Appeals assigns a referee and a telephonic hearing is conducted. The hearing is recorded. [When properly requested as part of a later appeal to the DCA, the recording is transcribed and made a part of the record.] The referee then issues a written decision and a notice to the claimant and the employer of their rights to appeal.

4. An appeal to FUAC is due within 20 days from the mailing date of the referee's decision. FUAC reviews the record to that point and issues an order affirming or reversing the referee's decision. FUAC then notifies the claimant and the employer of their rights to appeal to the DCA.

5. An appeal to the DCA must be filed with FUAC within 30 days of the FUAC final order. A copy of the FUAC order should be attached to the notice of appeal. Representative copies of a notice of appeal, FUAC order, transmittal by FUAC to the DCA, and record index are attached to these materials.

6. The notice of appeal and other information are transmitted by FUAC to the DCA, where a new appellate case number is opened. Within 10 days of filing the notice of appeal, the appellant should file "directions to the clerk" for the proper preparation of the record. Within 70 days of filing the notice of appeal, the initial brief of the appellant is due. Extensions of time are allowed, but of course these are tough if the appellant is a claimant receiving no benefits pending a favorable ruling on her or his appeal. These steps are detailed in The Florida Bar Appellate Practice Section "Pro Se [Self-Represented] Appellate Handbook," pp. 171-75 (2009 edition) (these pages follow). The entire Handbook is an excellent resource and is available on line at: http://prose.flabarappellate.org/pdf/ProSe_English_May09.pdf. The Florida Rules of Appellate Procedure are also on line at several sites, including: http://floridarulesofappellateprocedure.com/

If a party wants oral argument, a timely written request must be filed with the DCA and served upon the opposing party.

THE FLORIDA BAR APPELLATE PRACTICE SECTION

THE PRO SE [SELF-REPRESENTED] APPELLATE HANDBOOK©

Excerpts pp 171-75 online at
http://prose.flabarappellate.org/pdf/
ProSe_English_May09.pdf

CHAPTER 16: UNEMPLOYMENT COMPENSATION APPEALS

A. Introduction

The Agency for Workforce Innovation (AWI) runs Florida's unemployment compensation program. The Unemployment Appeals Commission (Commission) is the top level of administrative review of unemployment cases. The Commission is an independent body within the AWI. The law and rules regarding unemployment claims are in Chapter 443, Florida Statutes, and Titles 60BB-3, 60BB-5, 60BB-6 and 60BB-7 of the Florida Administrative Code. Information about proceedings before the AWI, including filing unemployment claims and hearings before an appeals referee, can be found on the AWI website at: http://www.floridajobs.org. Information about the Commission, including appeals of the referee's decision to the Commission and appeals of the Commission's decisions to the District Court of Appeal, can be found at the Commission's website at: http://www.uac.fl.gov.

B. The Initial Claim and Hearing Process.

Workers who lose their jobs can file a claim for unemployment benefits with the AWI. The AWI makes an "initial determination" or decision for each claim and sends a notice of that decision to the parties. If the claim is granted, the notice states the amount of benefits the claimant will receive. If the claim is denied, the AWI must give a reason. There are many reasons to deny benefits. The most common reasons are: (1) quitting work for personal reasons, and (2) being fired for misconduct at work. The AWI's initial decision is final unless the claimant or employer asks for an appeal hearing within 20 days.

An "appeal hearing" is like a trial when evidence is given. An appeal information booklet and hearing notice will be sent to the claimant, who should read both carefully. At the hearing, the parties present evidence to support their view. The evidence may include documents

and testimony from witnesses. For example, if the claim was denied based on misconduct or quitting for a personal reason, the claimant must present evidence which shows that was not the case. After the hearing, the "Appeals Referee" will make a written decision and send it to the parties. The written decision is final unless one party seeks review by the Commission within 20 days after the date of the appeals referee's decision.

When the Commission reviews the appeal referee's decision, it relies on the evidence given at the hearing. The Commission does not hold a second trial. It only looks to see whether the facts stated by the appeals referee are supported by evidence presented at the hearing and whether the legal conclusions are supported by the law. At the end of its review, the Commission will issue an order that affirms, modifies or reverses the appeals referee's decision. The clerk of the Commission will mail a copy of that order to the parties. The Commission's order, is the end of the administrative stage in unemployment cases. The Commission's decision can only be reviewed by filing a notice of appeal with the Commission and in the appropriate district court of appeal.

C. Review by the District Court of Appeal.

Appeals from the Commission are controlled by the Florida Rules of Appellate Procedure 9.010-9.900. Unlike filing unemployment claims and proceedings before appeals referees and the Commission, much of which can be done on-line or by telephone and fax, appeals to the district court cannot be conducted on the internet or by telephone or fax.

To appeal the Commission's order an appellant must file the original "notice of appeal" with the clerk of the Commission. The appellant must also file a copy of the notice of appeal with the clerk of the district court of appeal. This notice of appeal cannot be filed on the internet or by fax.

Which district court of appeal to file the notice of appeal in is a matter that is in dispute around the state. The Third District Court of Appeal allows claimants to file the notice of appeal in the jurisdiction where the appeals referee's office is located or where the claimant resides. For example, if the claimant lives in Miami and the hearing was conducted by telephone by an appeals referee located in Tallahassee, the claimant could file the appeal in either the First or the Third District Court of Appeal. The Second District Court of Appeal, however, requires that appeals be filed only in the jurisdiction where the appeals referee who issued the written decision is located. For instance, if the hearing was conducted by telephone by an appeals referee located in Tallahassee and the claimant in Tampa, the notice of appeal must be filed with the First District Court of Appeal. The safest procedure is to file the notice of appeal with the Commission and with the district court of appeal in the jurisdiction where the appeals referee's office is located.

The notice of appeal must be filed within 30 days of the date the Commission's order. This time period cannot be extended. The district court of appeal will not be able (will not have jurisdiction) to hear the appeal if the notice of appeal is not filed on time. The date of mailing cannot be considered. The notice of appeal must be actually received by the clerk of the Commission and/or the district court of appeal no later than 30 days after the order was filed by the clerk. A sample notice of appeal is provided in Florida Rule of Appellate Procedure 9.900, Form (e).

When the employer files the copy of the notice of appeal with the district court of appeal, it must also pay a filing fee of $300. Claimants do not need to pay filing fees.

Within 10 days of filing the notice of appeal, the appellant must file a document called "Directions to the Clerk" which tells the Commission's clerk what documents to include in the

record on appeal. A sample of the directions to the clerk is in Florida Rule of Appellate Procedure 9.900, Form (g).

For most appeals, the appellant will also include a typed copy of the tape-recorded trial before the appeals referee. That typed copy (or "transcript") is ordered by filing a "Designation to Reporter" with the clerk of the Commission along with the directions to the clerk. A sample of the designation to reporter appears in Florida Rule of Appellate Procedure 9.900, Form (h). Employers must pay someone to type a transcript of the hearing, but claimants are not required to pay this cost.

The record on appeal should include (1) the record before the Commission (for example, all notices, pleadings and evidence considered by the appeals referee and the written decision of the appeals referee); (2) the transcript of the trial before the appeals referee; and (3) the written order of the Commission. The clerk of the Commission will make the record and send it to the clerk at the district court of appeal within 50 days after the notice of appeal is filed.

The party who files the notice of appeal, the "appellant," must file an initial brief at the district court of appeal within 70 days after the notice of appeal was filed. *See* Chapter on Writing an Appellate Brief for the contents of a brief. The facts stated by the appeals referee are reviewed to see if there is "competent, substantial evidence" or proper evidence in the record to support them. If there is evidence to support the facts, they will be affirmed, even if there is other evidence to the contrary. The district court of appeal reviews the conclusions of law under the "clearly erroneous" standard. This means that the court will decide if the correct rules of law were applied. In writing the argument part of the briefs, the appellant should show how the facts are not supported by the evidence and/or how the wrong law was applied.

The other parties (usually the employer and the Commission) will be the "appellees."

Corporate employers must have an attorney. The Commission almost always files a brief. If the employer filed the notice of appeal, then the claimant below will be the appellee. An appellee may file an answer brief telling why the Commission's decision is correct. The answer brief must be filed within 20 days, plus 5 days for mailing, after the initial brief is mailed.

After the answer brief is filed, the appellant may file a reply brief within 20 days, plus 5 days for mailing.

Each party must file the original and 3 copies of all briefs with the district court of appeal. Page limits and type size for briefs are controlled by Florida Rule of Appellate Procedure 9.210(a) and are explained in the Chapter on Writing an Appellate Brief.

After all the briefs have been filed, the case will be assigned to a panel of 3 judges. Either party may file a request to come to court and make an "oral argument." The request must be filed no later than by the time the reply brief is due. The Third District Court of Appeal is the only court that regularly grants requests for oral argument in unemployment cases. Florida's other district courts of appeal do not regularly grant requests for oral argument. In reviewing the appeal, the district court of appeal does not have another trial.

After reading all of the briefs, and hearing oral argument, if any, the district court of appeal will issue a written decision. That decision will either affirm or reverse the Commission's order. A limited number of post-decision motions are allowed. *See* Chapter on Post-Decision Motions--Appellate. The district court of appeal's decision is the final step in the appeal process.

TIMELINESS

LEXSEE 35 FLA. LAW W. D 1188

Essie R. Baker, Appellant, vs. Florida Unemployment Appeals Commission, et al., Appellees.

No. 3D09-963

COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

2010 Fla. App. LEXIS 7309*; *35 Fla. L. Weekly D 1188

May 26, 2010, Opinion Filed

NOTICE:

NOT FINAL UNTIL DISPOSITION OF TIMELY FILED MOTION FOR REHEARING.

PRIOR HISTORY: [*1]

An Appeal from Florida Unemployment Appeals Commission. Lower Tribunal No. 09-245.

COUNSEL: Essie R. Baker, in proper person.

M. Elaine Howard, Senior Attorney, for appellees.

JUDGES: Before SUAREZ, CORTINAS, and SALTER, JJ. SUAREZ, J., concurring.

OPINION BY: SALTER

OPINION

SALTER, J.

Essie Baker, a non-lawyer representing herself, appeals a final order of the Florida Unemployment Appeals Commission (FUAC) affirming two decisions issued by a referee in the Office of Appeals of the Agency for Workforce Innovation (Agency). We reverse.

I. *Facts and Procedural History*

Baker commenced working for the TLC Christian Academy in 2006. On October 18, 2007, she faxed a cover note and a letter from her cardiologist to the owner and director of the Academy. [1] The doctor advised a medical leave for one week, October 19, 2007 through October 26, 2007. Her employer made no objection at the time. Upon returning to work on October 26, Baker found the Academy closed. Baker asserts that she made numerous calls to both the director's secretary and the director on the 26th, but did not receive a clear answer as to what had happened. According to Baker's testimony, she drove by the school on Monday, October 29, 2007, and saw the director and other [*2] individuals packing boxes and loading them into vehicles. Baker did not stop at the Academy, but contacted the director, who told her that the school was going through some difficulties, but would be reopening soon. [2] Baker filed for unemployment compensation and received a favorable determination for benefits on October 30.

1 The owner and director of the Academy acknowledged receipt of both of these communications in a later letter provided to the referee.

2 Baker eventually found out that the Academy had been closed down by the health department.

Neither the record nor the FUAC answer brief explains when or how the Academy obtained a reversal of the favorable determination, [3] but about seven months after the initial determination Baker's benefits stopped and she received an adverse redetermination from the Agency. The record copy of that notice is a computer-generated document unsigned by any human being. It includes "issue codes," which we are unable to decipher, an entry "DATE MAILED: 05/28/08," and a notice of determination that included these findings:

> THE CLAIMANT DID NOT REPORT TO WORK AND WAS NOT ON LEAVE STATUS. THE CLAIMANT IS CONSIDERED TO HAVE ABANDONED THE JOB.

* * *

THIS DETERMINATION [*3] CREATED AN OVERPAYMENT OF $ 5,225.00. PLEASE SEND REPAYMENT TO BENEFIT PAYMENT CONTROL, [ADDRESS IN TALLAHASSEE].

3 In an ordinary case such as this, and in which fraud is not alleged, the Agency may reconsider a determination "when it finds an error or when new evidence or information pertinent to the determination is discovered after a prior determination " for up to a year after the end of the benefit year. § (*443.151(3)(c)(1), Fla. Stat.*(2008).

The notice also included a description of appeal rights requiring that a request for reconsideration or an appeal be filed "within 20 calendar days [4] after the mailing date of this determination." Those instructions regarding an appeal also specify, "[i]f mailed, the postmark date is the filing date."

4 The Legislature established the time to appeal in *Section 443.151(4)(b)(1)*: " within 20 days after the date of mailing of the notice [of determination]." The Agency promulgated rules in accordance with that limitation; *Rules 60BB-5.005* and *.006, Florida Administrative Code*. Unlike Florida's judicially-established rules of procedure, no provisions are made for (a) an allowance of additional days when a document is mailed or (b) a written and signed [*4] certificate of service establishing the identity of a person who assured that the notice of determination was properly stamped and delivered to the postal authorities on the day of service.

It is undisputed that Baker filed an appeal online on June 19, 2008. The appeal recounted her medical leave, the cardiologist's documentation of that leave, her return to an empty school building, her inquiries, and her unequivocal denial of the employer's apparent argument that she had abandoned her job.

Baker testified in a later telephonic hearing that she received the notice of redetermination "on or about" May 28, [5] although she did not report a postmark date or identify the day of receipt. She also said that she thought, based on advice from an employee at an Agency office, that the twenty days were business days, not calendar days (despite a smaller-font notice in the "appeal rights" section stating clearly that the period was measured in calendar days). If the notice was in fact "mailed" on or after May 30, a Friday, Baker's online appeal was timely. If it was indeed "mailed" on May 28, 2008, the Agency's Office of Appeals and FUAC assert that the appeal was two days late, a jurisdictional [*5] infirmity precluding consideration of the merits of the appeal.

5 Baker did not volunteer this date. The referee asked, six months later and after asking her to look at the notice (not the envelope in which it was mailed), whether she had received the notice "on or about May 28th of 2008." Baker answered, "Yes ma'am, I did receive that," but did not identify the date of receipt.

Following Baker's June 19 appeal, the Agency's Office of Appeals docketed the case for further proceedings.

1. On July 25, 2008, the Office of Appeals mailed [6] Baker a notice of telephonic hearing. The hearing was scheduled for August 8, 2008.

6 Unlike the notice of adverse redetermination itself, communications from the Office of Appeals include a dated certificate of mailing identifying, and signed by, the Clerk or a Deputy Clerk.

2. On or about August 11, 2008, three days *after* the date set for the hearing, the Agency mailed Baker a notice of continuance advising her that the August 8 hearing would be rescheduled. After additional problems with scheduling, the telephonic hearing was reset for November 18, 2008. The hearing was to address whether Baker was discharged for misconduct connected with work or left work [*6] without good cause, and whether her appeal from the redetermination was timely.

3. At the hearing before the appeals referee on November 18, Baker acknowledged receipt of the adverse redetermination notice and testified that the Academy was closed by the health department during the week she was on medical leave. Importantly, the employer (the Academy) did not provide contact information, did not appear for the telephonic hearing, and has not controverted Baker's documents and testimony.

4. On December 9, 2008, the Office of Appeals referee issued a "Dismissal of Appeal Due to Lack of Jurisdiction." The findings of fact were short:

> The determination of the adjudicator was mailed to the appellant's address of record on May 28, 2008, and was **timely** received. The appeal was filed on **October 2, 2008**.

(Emphasis added). As FUAC properly concedes, this was erroneous, because Baker's appeal was filed June 19, 2008, not in October.

5. On December 26, 2008, a "corrected" decision was issued, although FUAC concedes that this decision also contained two errors. The previous findings of fact were modified as follows:

> The determination of the adjudicator was mailed to the appellant's address of record **[*7]** on May 28, 2008, and was **untimely** received. The appeal was filed on **June 19, 2008**.

(Emphasis added). This time the date of Baker's appeal was correct, but FUAC advises us that the referee actually meant to conclude that the redetermination was "timely" received by Baker. The corrected decision found good cause for Baker's non-appearance for a September 12 telephonic hearing, but mistakenly transposed the dates in the referee's description of the problem:

> On or about September 12, 2008, the claimant was issued a notice to appear for a telephone hearing **scheduled on August 29, 2008**. The claimant did not receive the notice.

(Emphasis supplied). The referee apparently intended to recite that the notice was August 29th for a telephone hearing two weeks later.

6. This "corrected decision" was then affirmed by FUAC in February 2009, without specific findings or analysis (and ostensibly based on the untimeliness of her appeal from the redetermination dated May 28), following a further appeal by Baker.

Baker's appeal to this Court followed.

II. *Analysis*

The Agency's redetermination and its dismissal of Baker's appeal not only cut off the modest weekly benefits that Baker had been receiving for seven **[*8]** months without incident; those rulings also demanded that she return the $ 5225 paid to her. On this record, it is also clear that the employer mounted no defense to Baker's appeal from the redetermination. The only issue is the jurisdictional question regarding the mailing date of the Agency's notice of redetermination. We decide that issue in favor of Baker for three reasons.

First, FUAC asks us to ignore as harmless the typographical errors in the original and "corrected" decisions, and yet to accept without questioning and without testimony the computer-generated "mailed date" entry on the Agency's redetermination notice. The Office of Appeals requires a postmark for a mailing or an online confirmation number for an appeal by the employee, but holds itself to no such standard. It could, but does not, obtain an official U.S. Postal System record establishing the mailing date. That position is not reciprocal and is unfair to claimants.

Second, we have previously declined to give presumptive validity to an unsigned determination setting forth a "date mailed." In *Teater v. Department of Commerce Board of Review, 370 So. 2d 847, 848 (Fla. 3d DCA 1979)*, we held that a referee's reliance **[*9]** on that date was not supported by competent substantial evidence, noting (among other factors):

> [T]he absence of direct evidence of actual mailing of the determination to the claimant; the lack of evidence as to the customary procedures employed for mailings of this nature; and the fact that the certificate or statement of mailing went unsigned; all taken together served to create such uncertainty in the matter that, in our view, the ends of justice will best be served by acceptance of the appeal.

In Ms. Baker's case, the Agency did not provide any competent evidence to establish that the computer-generated notice of redetermination was placed in a stamped, addressed envelope, delivered to the postal authorities, and postmarked [7] before May 30, 2008.

> 7 The rules of procedure regarding service by mail in judicial proceedings typically provide (or have been interpreted to mean) that service is effective on the day the envelope containing the pleading is deposited in an official mail box rather than the sometimes-later date of the postmark. These rules, however, also allow extra days to compensate for the fact that the pleading has been mailed rather than hand-delivered. In the cases in which **[*10]** timeliness is an issue, the actual postmark on an envelope in which a notice of redetermination is mailed seems to be the proper date to rely upon, taking into account (a) the fact that no extra days are allowed when a notice is mailed versus a hand-delivered notice, (b) the Legislature's rule of liberal construction in favor of the employee, and (c) the fact that the Agency itself specifies that the postmark date will establish the date upon which a notice of appeal is "mailed."

Third, *section 443.031, Florida Statutes* (2008), captioned "Rule of liberal construction," directs that "[t]his chapter shall be liberally construed in favor of a claimant of unemployment benefits who is unemployed through no fault of his or her own." The record in this case establishes that Ms. Baker was unemployed through no fault of her own. The Legislature clearly recognized that these appeals (to the Agency, to FUAC, and to this Court) are frequently prosecuted by employee/claimants who are not lawyers and are representing themselves, and that the weekly payments in question are a "safety net" for the recently-unemployed claimant, often providing the only source of money for food and shelter. In close **[*11]** cases such as this, a tie goes to the runner.

III. *Conclusion*

We regularly accord deference to an administrative agency's findings and interpretations of law within its legislatively-defined scope of authority and expertise. *Pub. Employees Relations Comm'n v. Dade County Police Benevolent Ass'n, 467 So. 2d 987 (Fla. 1985)*. We also recognize that the Agency, its Office of Appeals, and FUAC have themselves experienced both an enormous surge in the number of cases (the result of the dismal statewide and national economies of the past two years) and a reduction, not an increase, in fiscal and human resources to process these cases. The judicial branch has also experienced this pain.

But for the reasons articulated, we decline to accord deference to an unsigned, computer-generated notice bearing a date that may or may not have been the actual day the notice of redetermination began its journey to Ms. Baker in a stamped, postmarked envelope. In the absence of competent evidence establishing that date, we reverse and remand for the reinstatement of Ms. Baker's appeal and her benefits.

Reversed.

CONCUR BY: SUAREZ

CONCUR

SUAREZ, J., concurring.

I join in the decision and write solely to emphasize one point so that **[*12]** there is no misunderstanding. The only issue on appeal was whether or not the record contains substantial competent evidence to support the appeals referee's decision that the appeal was not timely filed. The notice of determination specifically informs the claimant that any appeal must be filed within twenty calendar days after the mailing date of the determination. *Section 443.151(3)* allows for only the twenty days. Nowhere in the Florida Rules of Civil Procedure is there an allocation for an additional five days if the notice is mailed. The problem in this case was that there was not substantial competent evidence in the record to support the Unemployment Appeals Commission's argument that the notice was mailed on May 28. There was only the printed date on the Determination stating that it was mailed on that date. There was no evidence as to actual mailing or mailing procedure, as required by this Court in *Teater v. Dep't of Commerce Bd. of Review, 370 So. 2d 847, 848 (Fla. 3d DCA 1979)*.

orlandosentinel.com/news/local/os-misconduct-claims-up-20100420,0,5233813.story

OrlandoSentinel.com

Misconduct claims soar with layoffs

By Jim Stratton, Orlando Sentinel

1:05 AM EDT, April 20, 2010

Businesses looking to contain unemployment costs might have found an easy way to challenge a laid-off worker's rights to jobless benefits, some experts say: Accuse the employee of wrongdoing.

During the recession, allegations of misconduct among the unemployed have jumped 46 percent even as Florida's labor force shrank by 6.3 percent.

In 2006-07, there were 306,194 unemployment claims that included an accusation of misconduct, according to data from the National Employment Law Project. In 2008-09 – the heart of the recession – there were 446,866.

Some experts say that indicates employers may be camouflaging layoffs to save money. Workers fired for misconduct don't get benefits and don't count against businesses when it comes time to calculate their contribution to the state's unemployment trust fund.

"That's their incentive," said Bruce Nissen, director of research at Florida International University's Center for Labor Research and Studies. "This is a way to reduce their costs."

University of Georgia professor Jeffrey Wenger agreed, saying an economic downturn shouldn't produce more bad behavior.

"I can't peer into the motives of any firm," said Wenger, an unemployment expert, "but if you're applying the standards of what constitutes misconduct consistently, I don't see why it would go up."

But other researchers have argued that the spike in misconduct allegations in 2008 and 2009 reflects the surge in unemployment claims. And representatives of

Florida's business lobbies said they don't think employers are masking layoffs as misconduct firings.

"I think that's a stretch," said Tamela Perdue, general counsel for Associated Industries of Florida. "I'd be very surprised if that's happening."

When a worker files for unemployment, the employer is asked why the person was let go. If they claim "misconduct," the state can deny jobless benefits.

But misconduct doesn't mean poor performance. That can get a worker fired, but under Florida law, only serious offenses such as dishonesty, insubordination, falsifying records or willfully disregarding an employer's rules make workers ineligible for benefits.

Karen Phillips, general counsel for the Florida United Businesses Association, said small companies may not recognize the distinction. They may equate all firing offenses with "misconduct" and make that charge when the laid-off worker seeks benefits.

"It's a very high standard," Phillips said. "The layperson might not understand that."

Lawyers from around the state, however, say they are seeing more flimsy misconduct charges than ever before. Jacksonville legal-aid attorney Megan Wall said her office gets five to 10 cases a week, compared with one or two a month before the recession.

"I find myself thinking, 'What, everybody in town is committing misconduct?'" said Wall.

Wall recently represented Tom Gillis, a St. Augustine construction superintendent who was let go from a company that built and remodeled restaurants. Gillis was denied unemployment when his bosses accused him of misconduct. The offense? After finishing a job, he left the site while a crew was cleaning up.

"I was totally aghast," said Gillis, 56. "I'd been with them 16 years, bringing jobs in on time."

Wall, who won Gillis' case on appeal, called the misconduct allegation "totally trumped up." She and Gillis said the real reason he was let go was because the company had little work in the pipeline.

In Orlando, legal-aid attorney Sally McArthur worked with four people fired from a time-share company last year. The employees came from the same department which, at the time, was being trimmed.

When they sought unemployment, the employer cited misconduct, saying the workers had used company e-mail for personal use. McArthur said that was true – the employees admitted as much – but scoffed at the notion that the behavior got them fired.

"It's obvious these were layoffs masquerading as misconduct cases," she said. "Everyone there was sending personal e-mail – managers admitted they did. But the rule was never enforced."

Companies have good reason to limit the number of people collecting benefits. Businesses pay unemployment taxes – which finance Florida's unemployment trust fund – based, in part, on how much their ex-employees collect over time. Generally, when fewer workers receive unemployment, the company pays less in taxes.

There is little downside to alleging misconduct. Though employers can be charged with a third-degree felony for lying to deny benefits, the state agency that administers unemployment said it can find no record of that happening.

The Florida Agency for Workforce Innovation also said it has found no evidence that employers are fabricating misconduct claims. And the rate at which employees are denied benefits because of misconduct, the agency reports, has hovered around 29 percent for several years.

Meanwhile, some researchers say the raw number of misconduct allegations is a misleading barometer. Wayne Vroman of The Urban Institute said it's only natural that misconduct allegations in unemployment claims would rise as the total number of claims exploded.

Vroman said employers have challenged claims more frequently during the past 20 years, but the recent jump, he contends, is simply a matter of volume.

"You have so many more cases moving through the system," Vroman said. "You'd expect that."

But several labor experts and economists argue misconduct firings should be driven by the size of the labor pool – more workers means more "bad" workers – not by recession-related layoffs. When viewed that way, in 2006, there were about 17 misconduct objections for every 1,000 workers in Florida. In 2009, there were 33.

"The likelihood that the amount of misconduct would jump as the labor market worsened is extremely low," said Nissen, the researcher at Florida International University. "If anything, workers would be more likely to 'toe the line' during times of high unemployment."

Or, as Wall, the Jacksonville lawyer, put it: "In lean times like this, workers suck it up and put up with a lot."

Jim Stratton can be reached at jstratton@orlandosentinel.com or 407-420-5379.

READ MORE ABOUT JOBLESS BENEFITS:

Jobless benefits will lapse for millions

Section II

Key Statutory Provisions
(Chapter 443, Florida Statutes)

[Available on line for 2009 via link to
http://www.leg.state.fl.us/STATUTES/index.cfm?App_mode=Display_Statute&URL=Ch0443/titl0443.htm&StatuteYear=2009&Title=%2D%3E2009%2D%3EChapter%20443]

CHAPTER 443

UNEMPLOYMENT COMPENSATION

443.1217 Wages.

443.131 Contributions.

443.1312 Reimbursements; nonprofit organizations.

443.1313 Public employers; reimbursements; election to pay contributions.

443.1315 Treatment of Indian tribes.

443.1316 Unemployment tax collection services; interagency agreement.

443.1317 Rulemaking authority; enforcement of rules.

443.141 Collection of contributions and reimbursements.

443.151 Procedure concerning claims.

443.163 Electronic reporting and remitting of contributions and reimbursements.

443.171 Agency for Workforce Innovation and commission; powers and duties; records and reports; proceedings; state-federal cooperation.

443.1715 Disclosure of information; confidentiality.

443.181 Public employment service.

443.191 Unemployment Compensation Trust Fund; establishment and control.

443.211 Employment Security Administration Trust Fund; appropriation; reimbursement.

443.221 Reciprocal arrangements.

Key Provisions (April 2010)

443.031 Rule of liberal construction.--This chapter shall be liberally construed in favor of a claimant of unemployment benefits who is unemployed through no fault of his or her own. Any doubt as to the proper construction of this chapter shall be resolved in favor of conformity with federal law, including, but not limited to, the Federal Unemployment Tax Act, the Social Security Act, the Wagner-Peyser Act, and the Workforce Investment Act.

443.036 Definitions.--As used in this chapter, the term:

(1) "Able to work" means physically and mentally capable of performing the duties of the occupation in which work is being sought.

(2) "Agricultural labor" means any remunerated service performed:

(a) On a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(b) In the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane if the major part of the service is performed on a farm.

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in s. 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, s. 3; 12 U.S.C. s. 1141j); the ginning of cotton; or the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(d)1. In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if the operator produced more than one-half of the commodity for which the service is performed.

2. In the employ of a group of operators of farms, or a cooperative organization of which the operators are members, in the performance of service described in subparagraph 1., but only if the operators produced more than one-half of the commodity for which the service is performed.

3. Subparagraphs 1. and 2. do not apply to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or in connection with grading, packing, packaging, or processing fresh citrus fruits.

(e) On a farm operated for profit if the service is not in the course of the employer's trade or business.

(3) "American aircraft" means an aircraft registered under the laws of the United States.

(4) "American employer" means:

(a) An individual who is a resident of the United States.

(b) A partnership, if two-thirds or more of the partners are residents of the United States.

(c) A trust, if each of the trustees is a resident of the United States.

(d) A corporation organized under the laws of the United States or of any state.

(5) "American vessel" means any vessel documented or numbered under the laws of the United States. The term includes any vessel that is neither documented or numbered under the laws of the United States, nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state.

(6) "Available for work" means actively seeking and being ready and willing to accept suitable employment.

(7) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

(8) "Benefits" means the money payable to an individual, as provided in this chapter, for his or her unemployment.

(9) "Benefit year" means, for an individual, the 1-year period beginning with the first day of the first week for which the individual first files a valid claim for benefits and, thereafter, the 1-year period beginning with the first day of the first week for which the individual next files a valid claim for benefits after the termination of his or her last preceding benefit year. Each claim for benefits made in accordance with s. 443.151(2) is a "valid claim" under this subsection if the individual was paid wages for insured work in accordance with the provisions of s. 443.091(1)(f) and is unemployed as defined in subsection (43) at the time of filing the claim. However, the Agency for Workforce Innovation may adopt rules providing for the establishment of a uniform benefit year for all workers in one or more groups or classes of service or within a particular industry when the agency determines, after notice to the industry and to the workers in the industry and an opportunity to be heard in the matter, that those groups or classes of workers in a particular industry periodically experience unemployment resulting from layoffs or shutdowns for limited periods of time.

(10) "Calendar quarter" means each period of 3 consecutive calendar months ending on March 31, June 30, September 30, and December 31 of each year.

(11) "Casual labor" means labor that is occasional, incidental, or irregular, not exceeding 200 person-hours in total duration. As used in this subsection, the term "duration" means the period of time from the commencement to the completion of the particular job or project. Services performed by an employee for his or her employer during a period of 1 calendar month or any 2 consecutive calendar months, however, are deemed to be casual labor only if the service is performed on 10 or fewer calendar days, regardless of whether those days are consecutive. If any of the services performed by an individual on a particular labor project are not casual labor, each of the services performed by the individual on that job or project may not be deemed casual labor. Services must constitute casual labor

and may not be performed in the course of the employer's trade or business for those services to be exempt under this section.

(12) "Commission" means the Unemployment Appeals Commission.

(13) "Contributing employer" means an employer who is liable for contributions under this chapter.

(14) "Contribution" means a payment of payroll tax to the Unemployment Compensation Trust Fund which is required under this chapter to finance unemployment benefits.

(15) "Crew leader" means an individual who:

(a) Furnishes individuals to perform service in agricultural labor for another person.

(b) Pays, either on his or her own behalf or on behalf of the other person, the individuals furnished by him or her for the service in agricultural labor performed by those individuals.

(c) Has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person.

(16) "Earned income" means gross remuneration derived from work, professional service, or self-employment. The term includes commissions, bonuses, back pay awards, and the cash value of all remuneration paid in a medium other than cash. The term does not include income derived from invested capital or ownership of property.

(17) "Educational institution" means an institution, except for an institution of higher education:

(a) In which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes, or abilities from, by, or under the guidance of, an instructor or teacher;

(b) That is approved, licensed, or issued a permit to operate as a school by the Department of Education or other governmental agency that is authorized within the state to approve, license, or issue a permit for the operation of a school; and

(c) That offers courses of study or training which are academic, technical, trade, or preparation for gainful employment in a recognized occupation.

(18) "Employee leasing company" means an employing unit that has a valid and active license under chapter 468 and that maintains the records required by s. 443.171(5) and, in addition, is responsible for producing quarterly reports concerning the clients of the employee leasing company and the internal staff of the employee leasing company. As used in this subsection, the term "client" means a party who has contracted with an employee leasing company to provide a worker, or workers, to perform services for the client. Leased employees include employees subsequently placed on the payroll of the employee leasing company on behalf of the client. An employee leasing company must notify the tax collection service provider within 30 days after the initiation or termination of the company's relationship with any client company under chapter 468.

(19) "Employer" means an employing unit subject to this chapter under s. 443.1215.

(20) "Employing unit" means an individual or type of organization, including a partnership, limited liability company, association, trust, estate, joint-stock company, insurance company, or corporation,

whether domestic or foreign; the receiver, trustee in bankruptcy, trustee, or successor of any of the foregoing; or the legal representative of a deceased person, which has or had in its employ one or more individuals performing services for it within this state.

(a) Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit is deemed to be employed by the employing unit for the purposes of this chapter, regardless of whether the individual was hired or paid directly by the employing unit or by an agent or employee of the employing unit, if the employing unit had actual or constructive knowledge of the work.

(b) Each individual performing services in this state for an employing unit maintaining at least two separate establishments in this state is deemed to be performing services for a single employing unit for the purposes of this chapter.

(c) A person who is an officer of a corporation, or a member of a limited liability company classified as a corporation for federal income tax purposes, and who performs services for the corporation or limited liability company in this state, regardless of whether those services are continuous, is deemed an employee of the corporation or the limited liability company during all of each week of his or her tenure of office, regardless of whether he or she is compensated for those services. Services are presumed to be rendered for the corporation in cases in which the officer is compensated by means other than dividends upon shares of stock of the corporation owned by him or her.

(d) A limited liability company shall be treated as having the same status as it is classified for federal income tax purposes.

(21) "Employment" means a service subject to this chapter under s. 443.1216 which is performed by an employee for the person employing him or her.

(22) "Farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(23) "Fund" means the Unemployment Compensation Trust Fund created under this chapter, into which all contributions and reimbursements required under this chapter are deposited and from which all benefits provided under this chapter are paid.

(24) "High quarter" means the quarter in an individual's base period in which the individual has the greatest amount of wages paid, regardless of the number of employers paying wages in that quarter.

(25) "Hospital" means an institution that is licensed, certified, or approved by the Agency for Health Care Administration as a hospital.

(26) "Institution of higher education" means an educational institution that:

(a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of a certificate of graduation;

(b) Is legally authorized in this state to provide a program of education beyond high school;

(c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program that is acceptable for full credit toward a bachelor's or higher degree; a program of postgraduate or postdoctoral studies; or a program of training to prepare students for gainful employment in a recognized occupation; and

(d) Is a public or other nonprofit institution.

The term includes each community college and state university in this state, and each other institution in this state authorized under s. 1005.03 to use the designation "college" or "university."

(27) "Insured work" means employment for employers.

(28) "Leave of absence" means a temporary break in service to an employer, for a specified period of time, during which the employing unit guarantees the same or a comparable position to the worker at the expiration of the leave.

(29) "Misconduct" includes, but is not limited to, the following, which may not be construed in pari materia with each other:

(a) Conduct demonstrating willful or wanton disregard of an employer's interests and found to be a deliberate violation or disregard of the standards of behavior which the employer has a right to expect of his or her employee; or

(b) Carelessness or negligence to a degree or recurrence that manifests culpability, wrongful intent, or evil design or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.

(30) "Monetary determination" means a determination of whether and in what amount a claimant is eligible for benefits based on the claimant's employment during the base period of the claim.

(31) "Nonmonetary determination" means a determination of the claimant's eligibility for benefits based on an issue other than monetary entitlement and benefit overpayment.

(32) "Not in the course of the employer's trade or business" means not promoting or advancing the trade or business of the employer.

(33) "One-stop career center" means a service site established and maintained as part of the one-stop delivery system under s. 445.009.

(34) "Pay period" means a period of 31 or fewer consecutive days for which a payment or remuneration is ordinarily made to the employee by the person employing him or her.

(35) "Public employer" means:

(a) A state agency or political subdivision of the state;

(b) An instrumentality that is wholly owned by one or more state agencies or political subdivisions of the state; or

(c) An instrumentality that is wholly owned by one or more state agencies, political subdivisions, or instrumentalities of the state and one or more state agencies or political subdivisions of one or more other states.

(36) "Reasonable assurance" means a written or verbal agreement, an agreement between an employer and a worker understood through tradition within the trade or occupation, or an agreement defined in an employer's policy.

(37) "Reimbursement" means a payment of money to the Unemployment Compensation Trust Fund in lieu of a contribution which is required under this chapter to finance unemployment benefits.

(38) "Reimbursing employer" means an employer who is liable for reimbursements in lieu of contributions under this chapter.

(39) "State" includes the states of the United States, the District of Columbia, Canada, the Commonwealth of Puerto Rico, and the Virgin Islands.

(40) "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under s. 3304 of the Internal Revenue Code of 1954.

(41) "Tax collection service provider" or "service provider" means the state agency providing unemployment tax collection services under contract with the Agency for Workforce Innovation through an interagency agreement pursuant to s. 443.1316.

(42) "Temporary layoff" means a job separation due to lack of work which does not exceed 8 consecutive weeks and which has a fixed or approximate return-to-work date.

(43) "Unemployment" means:

(a) An individual is "totally unemployed" in any week during which he or she does not perform any services and for which earned income is not payable to him or her. An individual is "partially unemployed" in any week of less than full-time work if the earned income payable to him or her for that week is less than his or her weekly benefit amount. The Agency for Workforce Innovation may adopt rules prescribing distinctions in the procedures for unemployed individuals based on total unemployment, part-time unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work.

(b) An individual's week of unemployment commences only after his or her registration with the Agency for Workforce Innovation as required in s. 443.091, except as the agency may otherwise prescribe by rule.

(44) "Wages" means remuneration subject to this chapter under s. 443.1217.

(45) "Week" means a period of 7 consecutive days as defined in the rules of the Agency for Workforce Innovation. The Agency for Workforce Innovation may by rule prescribe that a week is deemed to be "in," "within," or "during" the benefit year that contains the greater part of the week.

443.101 Disqualification for benefits.--An individual shall be disqualified for benefits:

(1)(a) For the week in which he or she has voluntarily left his or her work without good cause attributable to his or her employing unit or in which the individual has been discharged by his or her employing unit for misconduct connected with his or her work, based on a finding by the Agency for Workforce Innovation. As used in this paragraph, the term "work" means any work, whether full-time, part-time, or temporary.

1. Disqualification for voluntarily quitting continues for the full period of unemployment next ensuing after he or she has left his or her full-time, part-time, or temporary work voluntarily without good cause and until the individual has earned income equal to or in excess of 17 times his or her weekly

benefit amount. As used in this subsection, the term "good cause" includes only that cause attributable to the employing unit or which consists of illness or disability of the individual requiring separation from his or her work. Any other disqualification may not be imposed. An individual is not disqualified under this subsection for voluntarily leaving temporary work to return immediately when called to work by the permanent employing unit that temporarily terminated his or her work within the previous 6 calendar months. For benefit years beginning on or after July 1, 2004, an individual is not disqualified under this subsection for voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders.

2. Disqualification for being discharged for misconduct connected with his or her work continues for the full period of unemployment next ensuing after having been discharged and until the individual has become reemployed and has earned income of at least 17 times his or her weekly benefit amount and for not more than 52 weeks that immediately follow that week, as determined by the Agency for Workforce Innovation in each case according to the circumstances in each case or the seriousness of the misconduct, under the agency's rules adopted for determinations of disqualification for benefits for misconduct.

3. When an individual has provided notification to the employing unit of his or her intent to voluntarily leave work and the employing unit discharges the individual for reasons other than misconduct prior to the date the voluntary quit was to take effect, the individual, if otherwise entitled, will receive benefits from the date of the employer's discharge until the effective date of his or her voluntary quit.

4. When an individual is notified by the employing unit of the employer's intent to discharge the individual for reasons other than misconduct and the individual quits without good cause, as defined in this section, prior to the date the discharge was to take effect, the claimant is ineligible for benefits pursuant to s. 443.091(1)(c)1. for failing to be available for work for the week or weeks of unemployment occurring prior to the effective date of the discharge.

(b) For any week with respect to which the Agency for Workforce Innovation finds that his or her unemployment is due to a suspension for misconduct connected with the individual's work.

(c) For any week with respect to which the Agency for Workforce Innovation finds that his or her unemployment is due to a leave of absence, if the leave was voluntarily initiated by the individual.

(d) For any week with respect to which the Agency for Workforce Innovation finds that his or her unemployment is due to a discharge for misconduct connected with the individual's work, consisting of drug use, as evidenced by a positive, confirmed drug test.

(2) If the Agency for Workforce Innovation finds that the individual has failed without good cause to apply for available suitable work when directed by the agency or the one-stop career center, to accept suitable work when offered to him or her, or to return to the individual's customary self-employment when directed by the agency, the disqualification continues for the full period of unemployment next ensuing after he or she failed without good cause to apply for available suitable work, to accept suitable work, or to return to his or her customary self-employment, under this subsection, and until the individual has earned income at least 17 times his or her weekly benefit amount. The Agency for Workforce Innovation shall by rule adopt criteria for determining the "suitability of work," as used in this section. The Agency for Workforce Innovation in developing these rules shall consider the duration of a claimant's unemployment in determining the suitability of work and the suitability of proposed rates of compensation for available work. Further, after an individual has received 25 weeks of benefits in a single year, suitable work is a job that pays the minimum wage and is 120 percent or more of the weekly benefit amount the individual is drawing.

(a) In determining whether or not any work is suitable for an individual, the Agency for Workforce Innovation shall consider the degree of risk involved to his or her health, safety, and morals; his or her

physical fitness and prior training; the individual's experience and prior earnings; his or her length of unemployment and prospects for securing local work in his or her customary occupation; and the distance of the available work from his or her residence.

(b) Notwithstanding any other provisions of this chapter, work is not deemed suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

1. If the position offered is vacant due directly to a strike, lockout, or other labor dispute.

2. If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

3. If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(c) If the Agency for Workforce Innovation finds that an individual was rejected for offered employment as the direct result of a positive, confirmed drug test required as a condition of employment, the individual is disqualified for refusing to accept an offer of suitable work.

(3) For any week with respect to which he or she is receiving or has received remuneration in the form of:

(a) Wages in lieu of notice.

(b)1. Compensation for temporary total disability or permanent total disability under the workers' compensation law of any state or under a similar law of the United States.

2. However, if the remuneration referred to in paragraphs (a) and (b) is less than the benefits that would otherwise be due under this chapter, he or she is entitled to receive for that week, if otherwise eligible, benefits reduced by the amount of the remuneration.

(4) For any week with respect to which the Agency for Workforce Innovation finds that his or her total or partial unemployment is due to a labor dispute in active progress which exists at the factory, establishment, or other premises at which he or she is or was last employed; except that this subsection does not apply if it is shown to the satisfaction of the Agency for Workforce Innovation that:

(a)1. He or she is not participating in, financing, or directly interested in the labor dispute that is in active progress; however, the payment of regular union dues may not be construed as financing a labor dispute within the meaning of this section; and

2. He or she does not belong to a grade or class of workers of which immediately before the commencement of the labor dispute there were members employed at the premises at which the labor dispute occurs any of whom are participating in, financing, or directly interested in the dispute; if in any case separate branches of work are commonly conducted as separate businesses in separate premises, or are conducted in separate departments of the same premises, each department, for the purpose of this subsection, is deemed to be a separate factory, establishment, or other premise.

(b) His or her total or partial unemployment results from a lockout by his or her employer. As used in this section, the term "lockout" means a situation in which employees have not gone on strike, nor have employees notified the employer of a date certain for a strike, but in which employees have been denied entry to the factory, establishment, or other premises of employment by the employer. However, benefits are not payable under this paragraph if the lockout action was taken in response to

threats, actions, or other indications of impending damage to property and equipment or possible physical violence by employees or in response to actual damage or violence or a substantial reduction in production instigated or perpetrated by employees.

(5) For any week with respect to which or a part of which he or she has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States. For the purposes of this subsection, an unemployment compensation law of the United States is any law of the United States which provides for payment of any type and in any amounts for periods of unemployment due to lack of work. However, if the appropriate agency of the other state or of the United States finally determines that he or she is not entitled to unemployment benefits, this disqualification does not apply.

(6) For a period not to exceed 1 year from the date of the discovery by the Agency for Workforce Innovation of the making of any false or fraudulent representation for the purpose of obtaining benefits contrary to this chapter, constituting a violation under s. 443.071. This disqualification may be appealed in the same manner as any other disqualification imposed under this section. A conviction by any court of competent jurisdiction in this state of the offense prohibited or punished by s. 443.071 is conclusive upon the appeals referee and the commission of the making of the false or fraudulent representation for which disqualification is imposed under this section.

(7) If the Agency for Workforce Innovation finds that the individual is an alien, unless the alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law, including an alien who is lawfully present in the United States as a result of the application of s. 203(a)(7) or s. 212(d)(5) of the Immigration and Nationality Act, if any modifications to s. 3304(a)(14) of the Federal Unemployment Tax Act, as provided by Pub. L. No. 94-566, which specify other conditions or other effective dates than those stated under federal law for the denial of benefits based on services performed by aliens, and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, are deemed applicable under this section, if:

(a) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status is uniformly required from all applicants for benefits; and

(b) In the case of an individual whose application for benefits would otherwise be approved, a determination that benefits to such individual are not payable because of his or her alien status may not be made except by a preponderance of the evidence.

If the Agency for Workforce Innovation finds that the individual has refused without good cause an offer of resettlement or relocation, which offer provides for suitable employment for the individual notwithstanding the distance of relocation, resettlement, or employment from the current location of the individual in this state, this disqualification continues for the week in which the failure occurred and for not more than 17 weeks immediately after that week, or a reduction by not more than 5 weeks from the duration of benefits, as determined by the Agency for Workforce Innovation in each case.

(8) For any week with respect to which he or she has received, from a base period employer, benefits from a retirement, pension, or annuity program embodied in a union contract or either a public or private employee benefit program, except:

(a) For any week in which benefits from a retirement, pension, or annuity program, as referred to in this subsection, are less than the weekly benefits that would otherwise be due under this chapter, he or she is entitled to receive for that week, if otherwise eligible, benefits reduced by the amount of benefits from the retirement, pension, or annuity program, prorated to a weekly basis;

(b) For any week in which an individual has received benefits from a retirement, pension, or annuity program, as referred to in this subsection, for which program he or she has paid at least one-half of the contributions, the individual is entitled to receive for that week, if otherwise eligible, benefits reduced by one-half of the amount of benefits from the retirement, pension, or annuity program, prorated on a weekly basis; or

(c) For any week in which he or she has received benefits from a retirement, pension, or annuity program under the United States Social Security Act, for which program he or she has paid any contribution, benefits may not be reduced because of the contribution.

For the purpose of this subsection, benefits from the United States Social Security Act, a disability benefit program, or any other similar periodic payment based on the previous work of the individual are considered retirement income, except as provided in paragraph (c).

(9) If the individual was terminated from his or her work for violation of any criminal law punishable by imprisonment, or for any dishonest act, in connection with his or her work, as follows:

(a) If the Agency for Workforce Innovation or the Unemployment Appeals Commission finds that the individual was terminated from his or her work for violation of any criminal law punishable by imprisonment in connection with his or her work, and the individual was found guilty of the offense, made an admission of guilt in a court of law, or entered a plea of no contest, the individual is not entitled to unemployment benefits for up to 52 weeks, under rules adopted by the Agency for Workforce Innovation, and until he or she has earned income of at least 17 times his or her weekly benefit amount. If, before an adjudication of guilt, an admission of guilt, or a plea of no contest, the employer shows the Agency for Workforce Innovation that the arrest was due to a crime against the employer or the employer's business and, after considering all the evidence, the Agency for Workforce Innovation finds misconduct in connection with the individual's work, the individual is not entitled to unemployment benefits.

(b) If the Agency for Workforce Innovation or the Unemployment Appeals Commission finds that the individual was terminated from work for any dishonest act in connection with his or her work, the individual is not entitled to unemployment benefits for up to 52 weeks, under rules adopted by the Agency for Workforce Innovation, and until he or she has earned income of at least 17 times his or her weekly benefit amount. In addition, if the employer terminates an individual as a result of a dishonest act in connection with his or her work and the Agency for Workforce Innovation finds misconduct in connection with his or her work, the individual is not entitled to unemployment benefits.

With respect to an individual disqualified for benefits, the account of the terminating employer, if the employer is in the base period, is noncharged at the time the disqualification is imposed.

(10) Subject to the requirements of this subsection, if the claim is made based on the loss of employment as a leased employee for an employee leasing company or as a temporary employee for a temporary help firm.

(a) As used in this subsection, the term:

1. "Temporary help firm" means a firm that hires its own employees and assigns them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects, and includes a labor pool as defined in s. 448.22. The term also includes a firm created by an entity licensed under s. 125.012(6), which hires employees assigned by a union for the purpose of supplementing or supporting the workforce of the temporary help firm's clients. The term does not include employee leasing companies regulated under part XI of chapter 468.

2. "Temporary employee" means an employee assigned to work for the clients of a temporary help firm. The term also includes a day laborer performing day labor, as defined in s. 448.22, who is employed by a labor pool as defined in s. 448.22.

3. "Leased employee" means an employee assigned to work for the clients of an employee leasing company regulated under part XI of chapter 468.

(b) A temporary or leased employee is deemed to have voluntarily quit employment and is disqualified for benefits under subparagraph (1)(a)1. if, upon conclusion of his or her latest assignment, the temporary or leased employee, without good cause, failed to contact the temporary help or employee-leasing firm for reassignment, if the employer advised the temporary or leased employee at the time of hire and that the leased employee is notified also at the time of separation that he or she must report for reassignment upon conclusion of each assignment, regardless of the duration of the assignment, and that unemployment benefits may be denied for failure to report. For purposes of this section, the time of hire for a day laborer is upon his or her acceptance of the first assignment following completion of an employment application with the labor pool. The labor pool as defined in s. 448.22(1) must provide notice to the temporary employee upon conclusion of the latest assignment that work is available the next business day and that the temporary employee must report for reassignment the next business day. The notice must be given by means of a notice printed on the paycheck, written notice included in the pay envelope, or other written notification at the conclusion of the current assignment.

(11) If an individual is discharged from employment for drug use as evidenced by a positive, confirmed drug test as provided in paragraph (1)(d), or is rejected for offered employment because of a positive, confirmed drug test as provided in paragraph (2)(c), test results and chain of custody documentation provided to the employer by a licensed and approved drug-testing laboratory is self-authenticating and admissible in unemployment compensation hearings, and such evidence creates a rebuttable presumption that the individual used, or was using, controlled substances, subject to the following conditions:

(a) To qualify for the presumption described in this subsection, an employer must have implemented a drug-free workplace program under ss. 440.101 and 440.102, and must submit proof that the employer has qualified for the insurance discounts provided under s. 627.0915, as certified by the insurance carrier or self-insurance unit. In lieu of these requirements, an employer who does not fit the definition of "employer" in s. 440.102 may qualify for the presumption if the employer is in compliance with equivalent or more stringent drug-testing standards established by federal law or regulation.

(b) Only laboratories licensed and approved as provided in s. 440.102(9), or as provided by equivalent or more stringent licensing requirements established by federal law or regulation may perform the drug tests.

(c) Disclosure of drug test results and other information pertaining to drug testing of individuals who claim or receive compensation under this chapter shall be governed by s. 443.1715.

443.151 Procedure concerning claims.--

(1) POSTING OF INFORMATION.--

(a) Each employer must post and maintain in places readily accessible to individuals in her or his employ printed statements concerning benefit rights, claims for benefits, and other matters relating to the administration of this chapter as the Agency for Workforce Innovation may by rule prescribe. Each employer must supply to individuals copies of printed statements or other materials relating to claims

for benefits as directed by the agency's rules. The Agency for Workforce Innovation shall supply these printed statements and other materials to each employer without cost to the employer.

(b)1. The Agency for Workforce Innovation shall advise each individual filing a new claim for unemployment compensation, at the time of filing the claim, that:

a. Unemployment compensation is subject to federal income tax.

b. Requirements exist pertaining to estimated tax payments.

c. The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the federal Internal Revenue Code.

d. The individual is not permitted to change a previously elected withholding status more than twice per calendar year.

2. Amounts deducted and withheld from unemployment compensation must remain in the Unemployment Compensation Trust Fund until transferred to the federal taxing authority as payment of income tax.

3. The Agency for Workforce Innovation shall follow all procedures specified by the United States Department of Labor and the federal Internal Revenue Service pertaining to the deducting and withholding of income tax.

4. If more than one authorized request for deduction and withholding is made, amounts must be deducted and withheld in accordance with the following priorities:

a. Unemployment overpayments have first priority;

b. Child support payments have second priority; and

c. Withholding under this subsection has third priority.

(2) FILING OF CLAIM INVESTIGATIONS; NOTIFICATION OF CLAIMANTS AND EMPLOYERS.--Claims for benefits must be made in accordance with the rules adopted by the Agency for Workforce Innovation. The Agency for Workforce Innovation must notify claimants and employers regarding monetary and nonmonetary determinations of eligibility. Investigations of issues raised in connection with a claimant which may affect a claimant's eligibility for benefits or charges to an employer's employment record shall be conducted by the Agency for Workforce Innovation as prescribed by rule.

(3) DETERMINATION.--

(a) *In general.*--The Agency for Workforce Innovation shall promptly make an initial determination for each claim filed under subsection (2). The determination must include a statement of whether and in what amount the claimant is entitled to benefits, and, in the event of a denial, must state the reasons for the denial. A determination for the first week of a benefit year must also include a statement of whether the claimant was paid the wages required under s. 443.091(1)(f) and, if so, the first day of the benefit year, the claimant's weekly benefit amount, and the maximum total amount of benefits payable to the claimant for a benefit year. The Agency for Workforce Innovation shall promptly notify the claimant, the claimant's most recent employing unit, and all employers whose employment records are liable for benefits under the determination of the initial determination. The determination is final

unless within 20 days after the mailing of the notices to the parties' last known addresses, or in lieu of mailing, within 20 days after the delivery of the notices, an appeal or written request for reconsideration is filed by the claimant or other party entitled to notice.

(b) *Determinations in labor dispute cases.*--Whenever any claim involves a labor dispute described in s. 443.101(4), the Agency for Workforce Innovation shall promptly assign the claim to a special examiner who shall make a determination on the issues involving unemployment due to the labor dispute. The special examiner shall make the determination after an investigation, as necessary. The claimant or another party entitled to notice of the determination may appeal a determination under subsection (4).

(c) *Redeterminations.*--

1. The Agency for Workforce Innovation may reconsider a determination when it finds an error or when new evidence or information pertinent to the determination is discovered after a prior determination or redetermination. A redetermination may not be made more than 1 year after the last day of the benefit year unless the disqualification for making a false or fraudulent representation in s. 443.101(6) is applicable, in which case the redetermination may be made within 2 years after the false or fraudulent representation. The Agency for Workforce Innovation must promptly give notice of redetermination to the claimant and to any employers entitled to notice in the manner prescribed in this section for the notice of an initial determination. If the amount of benefits is increased by the redetermination, an appeal of the redetermination based solely on the increase may be filed as provided in subsection (4). If the amount of benefits is decreased by the redetermination, the redetermination may be appealed by the claimant when a subsequent claim for benefits is affected in amount or duration by the redetermination. If the final decision on the determination or redetermination to be reconsidered was made by an appeals referee, the commission, or a court, the Agency for Workforce Innovation may apply for a revised decision from the body or court that made the final decision.

2. If an appeal of an original determination is pending when a redetermination is issued, the appeal unless withdrawn is treated as an appeal from the redetermination.

(d) *Notice of determination or redetermination.*--Notice of any monetary or nonmonetary determination or redetermination under this chapter, together with the reasons for the determination or redetermination, must be promptly given to the claimant and to any employer entitled to notice in the manner provided in this subsection. The Agency for Workforce Innovation shall adopt rules prescribing the manner and procedure by which employers within the base period of a claimant become entitled to notice.

(4) APPEALS.--

(a) *Appeals referees.*--The Agency for Workforce Innovation shall appoint one or more impartial salaried appeals referees in accordance with s. 443.171(3) to hear and decide appealed claims. A person may not participate on behalf of the Agency for Workforce Innovation as an appeals referee in any case in which she or he is an interested party. The Agency for Workforce Innovation may designate alternates to serve in the absence or disqualification of any appeals referee on a temporary basis. These alternates must have the same qualifications required of appeals referees. The Agency for Workforce Innovation shall provide the commission and the appeals referees with proper facilities and assistance for the execution of their functions.

(b) *Filing and hearing.*--

1. The claimant or any other party entitled to notice of a determination may appeal an adverse determination to an appeals referee within 20 days after the date of mailing of the notice to her or his last known address or, if the notice is not mailed, within 20 days after the date of delivery of the notice.

2. Unless the appeal is untimely or withdrawn or review is initiated by the commission, the appeals referee, after mailing all parties and attorneys of record a notice of hearing at least 10 days before the date of hearing, notwithstanding the 14-day notice requirement in s. 120.569(2)(b), may only affirm, modify, or reverse the determination. An appeal may not be withdrawn without the permission of the appeals referee.

3. However, when an appeal appears to have been filed after the permissible time limit, the Office of Appeals may issue an order to show cause to the appellant, requiring the appellant to show why the appeal should not be dismissed as untimely. If the appellant does not, within 15 days after the mailing date of the order to show cause, provide written evidence of timely filing or good cause for failure to appeal timely, the appeal shall be dismissed.

4. When an appeal involves a question of whether services were performed by a claimant in employment or for an employer, the referee must give special notice of the question and of the pendency of the appeal to the employing unit and to the Agency for Workforce Innovation, both of which become parties to the proceeding.

5. The parties must be notified promptly of the referee's decision. The referee's decision is final unless further review is initiated under paragraph (c) within 20 days after the date of mailing notice of the decision to the party's last known address or, in lieu of mailing, within 20 days after the delivery of the notice.

(c) *Review by commission.*--The commission may, on its own motion, within the time limit in paragraph (b), initiate a review of the decision of an appeals referee. The commission may also allow the Agency for Workforce Innovation or any adversely affected party entitled to notice of the decision to appeal the decision by filing an application within the time limit in paragraph (b). An adversely affected party has the right to appeal the decision if the Agency for Workforce Innovation's determination is not affirmed by the appeals referee. The commission may affirm, modify, or reverse the findings and conclusions of the appeals referee based on evidence previously submitted in the case or based on additional evidence taken at the direction of the commission. The commission may assume jurisdiction of or transfer to another appeals referee the proceedings on any claim pending before an appeals referee. Any proceeding in which the commission assumes jurisdiction before completion must be heard by the commission in accordance with the requirement of this subsection for proceedings before an appeals referee. When the commission denies an application to hear an appeal of an appeals referee's decision, the decision of the appeals referee is the decision of the commission for purposes of this paragraph and is subject to judicial review within the same time and manner as decisions of the commission, except that the time for initiating review runs from the date of notice of the commission's order denying the application to hear an appeal.

(d) *Procedure.*--The manner that appealed claims are presented must comply with the commission's rules. Witnesses subpoenaed under this section are allowed fees at the rate established by s. 92.142, and fees of witnesses subpoenaed on behalf of the Agency for Workforce Innovation or any claimant are deemed part of the expense of administering this chapter.

(e) *Judicial review.*--Orders of the commission entered under paragraph (c) are subject to review only by notice of appeal in the district court of appeal in the appellate district in which the issues involved were decided by an appeals referee. Notwithstanding chapter 120, the commission is a party respondent to every such proceeding. The Agency for Workforce Innovation may initiate judicial review of orders in the same manner and to the same extent as any other party.

(5) PAYMENT OF BENEFITS.--

(a) The Agency for Workforce Innovation shall promptly pay benefits in accordance with a determination or redetermination regardless of any appeal or pending appeal. Before payment of benefits to the claimant, however, each employer who is liable for reimbursements in lieu of contributions for payment of the benefits must be notified, at the address on file with the Agency for Workforce Innovation or its tax collection service provider, of the initial determination of the claim and must be given 10 days to respond.

(b) The Agency for Workforce Innovation shall promptly pay benefits, regardless of whether a determination is under appeal, when the determination allowing benefits is affirmed in any amount by an appeals referee or is affirmed by the commission, or if a decision of an appeals referee allowing benefits is affirmed in any amount by the commission. In these instances, a court may not issue an injunction, supersedeas, stay, or other writ or process suspending payment of benefits. A contributing employer may not, however, be charged with benefits paid under an erroneous determination if the decision is ultimately reversed. Benefits are not paid for any subsequent weeks of unemployment involved in a reversal.

(c) The provisions of paragraph (b) relating to charging an employer liable for contributions do not apply to reimbursing employers.

(6) RECOVERY AND RECOUPMENT.--

(a) Any person who, by reason of her or his fraud, receives benefits under this chapter to which she or he is not entitled is liable to repay those benefits to the Agency for Workforce Innovation on behalf of the trust fund or, in the agency's discretion, to have those benefits deducted from future benefits payable to her or him under this chapter. To enforce this paragraph, the Agency for Workforce Innovation must find the existence of fraud through a redetermination or decision under this section within 2 years after the fraud was committed. Any recovery or recoupment of these benefits must be effected within 5 years after the redetermination or decision.

(b) Any person who, by reason other than her or his fraud, receives benefits under this chapter to which, under a redetermination or decision pursuant to this section, she or he is found not entitled, is liable to repay those benefits to the Agency for Workforce Innovation on behalf of the trust fund or, in the agency's discretion, to have those benefits deducted from any future benefits payable to her or him under this chapter. Any recovery or recoupment of benefits must be effected within 3 years after the redetermination or decision.

(c) Recoupment from future benefits is not permitted if the benefits are received by such person without fault on the person's part and recoupment would defeat the purpose of this chapter or would be inequitable and against good conscience.

(d) The Agency for Workforce Innovation shall collect the repayment of benefits without interest by the deduction of benefits through a redetermination or by a civil action.

(e) Notwithstanding any other provision of this chapter, any person who is determined by this state, a cooperating state agency, the United States Secretary of Labor, or a court of competent jurisdiction to have received any payments under the Trade Act of 1974, as amended, to which the person was not entitled shall have those payments deducted from any regular benefits, as defined in s. 443.1115(1)(e), payable to her or him under this chapter. Each deduction under this paragraph may not exceed 50 percent of the amount otherwise payable. The payments deducted shall be remitted to the agency that issued the payments under the Trade Act of 1974, as amended, for return to the United States Treasury. Except for overpayments determined by a court of competent jurisdiction, a deduction may

not be made under this paragraph until a determination by the state agency or the United States Secretary of Labor is final.

(7) REPRESENTATION IN ADMINISTRATIVE PROCEEDINGS.--In any administrative proceeding conducted under this chapter, an employer or a claimant has the right, at his or her own expense, to be represented by counsel or by an authorized representative. Notwithstanding s. 120.62(2), the authorized representative need not be a qualified representative.

(8) BILINGUAL REQUIREMENTS.--

(a) The Agency for Workforce Innovation shall provide printed bilingual instructional and educational materials in the appropriate language in those counties in which 5 percent or more of the households in the county are classified as a single-language minority.

(b) The Agency for Workforce Innovation shall ensure that one-stop career centers and appeals offices located in counties subject to the requirements of paragraph (c) prominently post notices in the appropriate languages and that translators are available in those centers and offices.

(c) As used in this subsection, the term "single-language minority" means households that speak the same non-English language and that do not contain an adult fluent in English. The Agency for Workforce Innovation shall develop estimates of the percentages of single-language minority households for each county by using data from the United States Bureau of the Census.