

MAKING YOUR BEST CASE

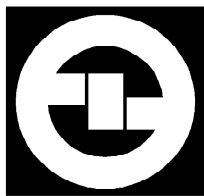
**The Ins and Outs of
Michigan's Unemployment Insurance System**



Prepared by the
SUGAR LAW CENTER
FOR ECONOMIC AND SOCIAL JUSTICE

“Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment... requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family ... The systematic accumulation of funds... to be used for the benefit of persons unemployed through no fault of their own... is for the public good, and the general welfare of the people of this state.”

~ The Michigan Employment Security Act of 1936, Section 421.2



The Maurice & Jane Sugar Law Center for Economic & Social Justice is a national nonprofit public-interest law center, dedicated to defending the rights of working people and their communities. We work for economic and social justice by demanding legal and moral accountability from corporations and government. When people anywhere in the US face workplace or social injustice, the Sugar Law Center and its broad network of cooperating attorneys provide representation to enforce their legal rights.

***The Sugar Law Center is proud to be affiliated with the National Lawyers Guild,
and to conduct all its work under contract with UAW Local 2320.***

TABLE OF CONTENTS

INTRODUCTION	Page 1
Section 1 - THE PROCESS OF CLAIMING UNEMPLOYMENT BENEFITS	Page 2
Section 2 – ISSUES THAT ARISE IN DISPUTES OVER UI BENEFITS	Page 7
Section 3 – VOLUNTARY LEAVING	Page 8
Section 4 – MISCONDUCT	Page 11
Section 5 – SUITABLE WORK AND AVAILABILITY	Page 14
Section 6 – EMPLOYEE OR INDEPENDENT CONTRACTOR?	Page 15
Section 7 – PREPARING FOR THE HEARING.	Page 17
Section 8 – AT THE HEARING	Page 19
Section 9 – FRAUD, OVERPAYMENT AND RESTITUTION	Page 21
GLOSSARY	Page 22

INTRODUCTION

A. UNEMPLOYMENT INSURANCE – WHAT IS IT?

Michigan's Unemployment Insurance (UI) System helps protect Michigan workers from suffering the potential devastating effects of unemployment. When people lose their jobs through no fault of their own, UI lessens the extent to which individual workers and their families suffer from unexpected loss of income.

Workers' right to unemployment insurance benefits is established by the Michigan Employment Security Act. Michigan law recognizes that the Act is to be liberally interpreted to relieve economic insecurity caused by unemployment and to provide assistance to the unemployed. This means that where possible, UI decisions should be made to benefit the worker.

The funds used for workers' UI benefits are paid into the system by employers through specifically designated UI taxes. The funds collected through the UI tax system are managed by the Michigan Unemployment Insurance Agency (UIA). The UIA uses these funds to help workers who have lost their jobs.

As part of its mandate, the UIA must determine the eligibility of each unemployed worker to receive benefits. The UIA also must determine which employer is liable to pay the worker's claim.

B. PURPOSE OF THIS GUIDE

The Michigan UIA has produced materials describing how the UI system works, including complex rules on employment and job loss. The official materials of the Michigan UIA state what you must do throughout the time you are unemployed in order to stay eligible for UI benefits. This handbook does not address most of these technical questions, and should not be considered a substitute for information provided by the UIA.

It is essential that workers seeking benefits access UIA official resources as soon as possible. If you have not yet contacted UIA, see the inside back cover of this handbook for UIA phone, internet and office addresses.

The process of obtaining UI benefits often involves judgment on the part of UIA representatives. Some of the decisions are defined, such as the dollar thresholds for wages earned over a particular period of time. But in some circumstances, the UIA representatives must make a judgment call based on the facts of the claim.

This handbook can supplement the official resources and help you successfully navigate the UIA system by making you aware of the basic issues a UIA representative considers

When a worker and the employer describe the facts of termination differently, the UIA staff must consider both versions of events and make a determination in favor of one side or the other. These decisions are based on the law, regulations, past decisions in similar cases, the facts, and the decision-makers' interpretations of each.

This guide can help you present your case to the UI decision-makers and obtain UI benefits to which you are entitled.

Unsure? File!

The factors that make a person eligible or ineligible for UI benefits are complicated and can be confusing.

If you are not sure whether you qualify, file a claim. You have nothing to lose. Remember that this system exists to help people when they are between jobs.

SECTION 1: THE PROCESS OF CLAIMING UNEMPLOYMENT BENEFITS

The procedures to apply for UI benefits are simple. It's important to apply for unemployment benefits through the UIA (either online, by phone, or in person) as soon as possible after being unemployed. You will not receive any benefits for weeks that pass before you apply. Once you have applied, you must contact UIA once every two weeks through the system called "MARVIN" (Michigan's Automated Response Voice Interactive Network) to claim your continued eligibility.

After you apply, the UIA will approve or deny your application. Some people get their claim approved without any problem and begin collecting benefits. Others have to vigorously prove and defend their right to receive the benefits when their claim is contested by a former employer. If your former employer contests your claim, there are several levels of review where you might have to prove and defend your right to the benefits.

If your claim is denied and you appeal the denial, you need to keep recertifying through MARVIN. Any period for which you do not contact MARVIN may not be compensated.

A. APPLYING FOR BENEFITS: A TWO-STEP PROCESS

Step 1 – Register for Work with Michigan Works! and Michigan Talent Bank

Under the state UI system, unemployment benefits are reserved for people who are "available for work." This means that in order to qualify for benefits, you must be able to show that you want to work and would take a job if it were offered. The state has a network of offices called "Michigan Works!" that helps Michigan residents find work.

Before you can submit a claim for unemployment benefits, you must visit a Michigan Works! site **in person** to "register for work" in their system. There are over 100 Michigan Works! Service Centers throughout the state. To locate the center closest to you, call 1-800-285-WORKS (9675) or visit <http://michiganworks.org/agencies/map/>.

When you arrive at a Michigan Works! Service Center, you will need to show two important documents: a photo ID that is accepted by the state (driver's license, state ID, green card, etc.), and an official document that shows both your social security number and your name. A Social Security card is best, but if you don't have your Social Security card, bring an employment or tax document that shows your full name and full social security number.

Once the Michigan Works! staff have verified your identity, they will help you register with the Michigan Talent Bank (MTB), an online resume/job seeking system that is affiliated with Michigan Works!. Michigan Works! representatives will assist you in filing a resume with the MTB. If you already have a printed resume, you can bring it with you. If you don't have a resume, don't worry – the staff will help you put one together through the MTB online system.

Note: You can create your resume on MTB from any computer and that will help things go faster when you visit, but you still need to visit a Michigan Works! Center to officially register.

The Michigan Works! staff will give you an official UIA form titled Notice to Register for Work, and will stamp it to indicate that you are in the system. They will also report your social security number and full name to the UIA. It will take at least three business days

Avoiding Snags in Registration

- Your first and last names have to be entered identically at the UIA and Michigan Works! office. For example, some people use different spellings at different times or add a hyphen to their names—or use a middle name as a first name or vice versa. Any of these differences could delay your benefits. Make sure you use the exact name and spelling that are associated with your social security number.
- Remember to keep the stamped "Notice to Register for Work" that the Michigan Works! staff gives you. An electronic system maintains worker records, but in case the system does not record your information properly, you should keep the paper notice. If you need to provide proof of the date that you registered for work, this form will be very important.

for your name and social security to be processed by the system, after which you can initiate your UI benefits claim (see Step 2 below).

Step 2 – Apply for Benefits through the UIA

Once you have registered for work at a Michigan Works! Center, you need to apply for benefits from the UIA.

Here is what you need to file a claim for UI benefits: your Social Security Number, your Driver's License or State Identification or your MARVIN PIN (if you have one); along with the names and addresses of employers where you have worked during the past 18 months and the last date of employment with each employer. If you are not a U.S. citizen or national, you will need your Alien Registration Number and the expiration date of your work authorization. It will be helpful if you can provide documentation of your quarterly gross earnings, such as pay stubs, but if you don't have that paperwork you can still apply.

You can apply for benefits in one of three ways: internet, phone, or in-person. Choose one of the following:

- Apply online at the Michigan UIA's website (follow the links at www.michigan.gov/uia or go directly to <http://goo.gl/x9mWC>). If you do not have internet access at home, you can use public computers provided at Michigan Works! Service Centers, UIA Service Centers, or your local public library.
- Call in your application at **1-866-500-0017**. The scheduled time for filing by phone is based on the last two digits of your Social Security number.

Call-In Schedule:

	Monday	Tuesday	Wednesday	Thursday & Friday
8:00 am – 12 noon	00-15	34-48	67-81	OPEN CALL-IN
12:30 pm - 4:30 pm	16-33	49-66	82-99	

For example, if your Social Security number ends in 50, you would call on Tuesday afternoon. Workers who are unable to call on their appointed day and time can dial the toll-free number anytime between 8:00 a.m. and 4:30 p.m. Eastern time on Thursday or Friday of the same week.

- Apply in person by visiting a local UIA office. The inside back cover of this handbook provides a list of UIA offices. *Note: If you have trouble communicating in English, staff at the offices can arrange for an interpreter to help.*

Within ten days of your application, you should receive notification from the UIA that your claim for benefits has been approved or denied. This notice is called a "Determination," and is described in greater detail below.

Step 3 – Recertify Your Eligibility Regularly Through MARVIN

If you have been approved for benefits, or if you are appealing a denial, **you must maintain your claim as active** for each new two-week period by updating it on MARVIN. Instructions on how to use MARVIN are available through resources listed on the inside back cover of this handbook.

You should use the telephone system the first time you certify through MARVIN, but after that you can use the online system. The last two digits of your Social Security number determine your designated day and time slot for contacting MARVIN, but if you miss your slot you can do it on Thursday or Friday.

Remember: If you don't claim benefits through MARVIN every two weeks, you may not be compensated for the period you missed. Even while appealing a denial YOU MUST REPORT THROUGH MARVIN.

B. THE DETERMINATION

A UIA representative will review the forms that you submit with your claim. Your former employer will also file forms about your employment. Based on all of this information, the UIA representative then makes an official "Determination" stating whether you are eligible to receive benefits. If you have worked for more than one employer

during the 18 months before filing a claim, the UIA also determines which employer(s) are liable for the payments.

The official Determination is usually issued within 10 days after your application for benefits. It will state one of two things: either 1) you qualified to receive benefits or 2) you did not qualify to receive benefits. The UIA will send a notice of the Determination to you and the employer. This notice may summarize the facts of your case, list legal standards applied, and reasons for the Determination. If benefits have been approved, the form states the weekly benefit and the number of weeks that benefits will be paid.

If benefits are not approved, the notice states why you were disqualified. The reason may be “**monetary**,” which means you did not reach the cumulative threshold of wages earned in order to be eligible for benefits. Other reasons for disqualification are noted in Sections 3-6 of this book. Those sections also give examples of workers who successfully challenged disqualification, plus suggestions for how to present your case to challenge the denial of benefits.

C. REQUESTING A REDETERMINATION (Protesting the Determination)

Either the unemployed worker or the employer may protest the Determination by requesting a Redetermination. A protest must be in **writing**, and must be **signed**. It also has to be received by the UIA within 30 days after the Determination is issued.

When a protest is submitted on time, your case is reviewed again. Generally, at the Redetermination stage, a different UIA representative will review your case. This representative may ask you or your employer for additional information, and will then issue a Redetermination. The Redetermination notice will look similar to your Determination notice. The Redetermination will either affirm, modify, or reverse the initial Determination.

Appeals Can Make A Difference

You should always consider appealing an unfavorable Determination or Redetermination. Persistence can pay off since you may be able to persuade the next level UIA decision maker that you are entitled to benefits.

D. FORMAL HEARING (Appealing the Redetermination)

After receiving the Redetermination notice, either the unemployed worker or the employer can appeal the decision. As before, the appeal must be **written, signed, and received** by the UIA **within 30 days** of the date that the Redetermination was issued. If the appeal is received on time, a hearing will be scheduled. The State Office of Administrative Hearings and Rules (SOAHR) mails the Notice of Hearing at least 10 days before the hearing date. This Notice of Hearing states the time and place for the hearing (usually a regional hearing location), or it will state that the hearing will be conducted over the phone on a certain date and time. You must attend and be ready to present your claim at this hearing.

The hearing will be held before an Administrative Law Judge (ALJ). The ALJ is employed by the SOAHR. At this hearing, the information contained in the UIA's file carries less weight, so both parties should come prepared to present their case and to answer questions from the opposing party and the ALJ.

Sections 7 and 8 of this handbook provide specific advice on procedures and strategies at a hearing.

In many cases, workers can obtain no-cost help from a trained advocate to prepare for and present their claim at a hearing. **Refer to Section 7B of this handbook for information on obtaining an advocate's assistance.**

At the hearing, the ALJ reviews documents, listens to both parties' testimony, and decides whether to confirm or reverse the Redetermination. The ALJ may also question the parties and witnesses. Following this hearing, the ALJ issues a decision. If the ALJ rules against you, consider doing the following:

1. Request a rehearing. Rehearings are only granted in limited circumstances. This option is best when you obtain new evidence that was unavailable to you at the time of the hearing.
2. Appeal the ALJ's decision to the Michigan Employment Security Board of Review. This is a separate agency from the UIA or the SOAHR.

E. BOARD OF REVIEW

To be filed on time, a written appeal must be received by the Board of Review at 611 West Ottawa Street, P.O. Box

30475, Lansing, MI 48909-7975 within 30 calendar days after the mailing date on the ALJ's decision.

The Board of Review consists of five members appointed by the governor. These members review the transcripts and evidence presented at your ALJ hearing and then makes a decision based only on this "record" of the claim.

After receiving your appeal request, the Board of Review will mail you a copy of the transcript from the ALJ hearing along with further guidelines to follow if you would like to request an oral argument, which are rarely granted, or submit a written argument.

Neither of these options is required and the Board will review the record regardless of whether you request oral argument or submit a written argument. It may benefit you to submit a written argument, but you only have **20 days from the date the Board mailed the transcripts** in which to submit your written argument. Also, you can only submit a written argument if both parties are represented by attorneys or agents or when there is **written consent**, signed by both parties, to submit a written argument. This means you would need a signed statement from the employer or its representative agreeing to submission of written arguments.

If you do prepare a written argument, it should tell your side of the story by referring to testimony and evidence presented in the transcript and mentioning the applicable legal standard. Although the Board of Review is free to make findings of fact different than those made by the ALJ, these findings are limited to what was presented at the ALJ hearing. Thus, you most likely will not be able to present any new evidence to the Board of Review unless, for extraordinary reasons, this new evidence could not have been known or discovered in time for use at the ALJ hearing.

Although the state's advocacy program does not provide assistance at the Board of Review level, you may be able to get help at this stage from one of the other resources listed in Section 7B of this handbook.

F. CIRCUIT COURT AND BEYOND

After receiving a decision from the Board of Review, the losing party may file an appeal to the Circuit Court of the county in which the claimant resides or the Circuit Court of the county in which the claimant's place of employment was located. Application for the appeal must be made **within 30 days after the mailing date of the Board of Review's decision** and the appealing party must include proof that all interested parties and the Board of Review were served with the circuit court claim of appeal. Look to Michigan Court Rules 7.104(B) and 7.101(I) for further information on circuit court appeals and briefs (rules online at <http://coa.courts.mi.gov/rules/documents/1chapter7appellaterules.pdf> or <http://goo.gl/MFYcj>).

Even after the Circuit Court makes its decision, parties have both the **Michigan Court of Appeals and the Michigan Supreme Court** as their further options. If you are considering appealing to these courts, you should contact the resources listed in Section 7D and remember that when either party chooses to exercise the appeal rights mentioned above, the **standards of review** are different at each level.

Although the state's advocacy program does not provide assistance at these levels, you may be able to get help from one of the other resources listed in Section 7B of this handbook.

G. STANDARDS OF REVIEW

During each of the stages listed above, it is important to consider the standard of review used at each level. The standard of review is the test that judges and other decision makers use to decide whether they can overturn the decision that occurred at the previous level. Think of it as "how high of a bar you have to jump over" to win your case. During these appeals, even if the employer does not give any arguments at all, you may still need to show evidence or show that there was a certain type of error or big enough mistake in the case to meet the applicable standard of review.

Your first hearing before an Administrative Law Judge is all the more important because the standards of review are higher at each level of appeal. Furthermore, you most likely will not have a chance to present additional evidence during further appeals.

ALJ Hearing: The ALJ will consider the **burden of proof** (see Sections 3-6 to learn what burdens of proof apply to what issues) and the applicable legal test for the issues involved (voluntary leaving, misconduct, etc). Even if your employer does not show up to the hearing, you will likely still have to give testimony on the record so the judge can make a decision based on

facts that were presented. The judge is not bound by the Redetermination that the Agency made before it was appealed and will hear the facts fresh, as if the claim was being decided for the first time. This is called a “de novo” standard of review.

Board of Review: The Board is generally limited to examining only the facts that were presented at the ALJ hearing. They are, however, free to make factual determinations different from those made by the ALJ. The standard of review does not require the Board to give deference to the ALJ’s decision.

Circuit Court: Here you will have to show that the decision below (usually by the Board of Review) was “not authorized by law and not supported by competent, material, and substantial evidence.” Substantial evidence is defined as “evidence which a reasoning mind would accept as sufficient to support a conclusion.”

This means that even if the Circuit Court judge would have ruled differently than the Board of Review, he or she cannot substitute their own judgment for the Board’s. The Circuit Court judge can only overturn the Board if the record indicates that the Board’s decision wasn’t authorized by law and was not supported by the evidence.

Michigan Court of Appeals: At this level the standard requires that the decision below was “clearly erroneous” – that is, “on review of the whole record, the Court is left with the definite and firm conviction that a mistake has been made.” This is an even higher standard of review than at Circuit Court.

The **Michigan Supreme Court** can choose whether or not to hear your appeal. Consult with the resources listed in Section 7B for further information.

H. TIMELINESS OF APPEALS AND “GOOD CAUSE”

For a protest or appeal to be filed on time, the written and signed copies must be received by the relevant agency by the end of the **30th day from the date of the decision** that you are protesting or appealing. Just having the right date on the postmark—or even a date a few days ahead—is not enough to be sure your protest is timely. The protest or appeal must be **received** by the 30th day.

If the protest or appeal is timely, the decision will be reviewed and a new decision will affirm, modify, or reverse the prior decision on your claim.

If the protest or appeal is not received by the required date you will receive notice that it is considered “untimely.” Your claim will only be considered further if you show “**good cause**” for the untimeliness of your request.

Just being forgetful or negligent is not enough to show good cause. Examples of “good cause” include

- serious personal illness;
- a lack of written notice or other clerical errors by the UIA;
- evidence of untimely postal service;
- being out of town to look for work;
- death or serious illness of a family member; or
- other occurrences that *imply a situation out of your direct control*.

If you believe that you have good cause for filing an untimely protest or appeal, you should file a request to reopen the claim for “good cause” as soon as possible. This request to reopen the claim will not be granted if more than one year has passed from the date the decision was mailed. Even if you apply before one year has passed, you will need to show that events you cite in support of a finding of “good cause” existed up until you submitted the new request. So take action as soon as you realize you missed the deadline.

If you are late in filing a request for a Redetermination, you should include the “good cause” reason in the request for Redetermination. If you missed a hearing due to a reason you believe is good cause, you should request a rehearing and include in your request the good cause for missing the hearing. If your request was for a hearing, the lateness of your request will be the first issue that will be addressed in your hearing—and you will have to show “good cause” for untimeliness before the ALJ will consider the other issues on your claim. The judge will hear the facts as to why you are late and hold you to the standard of conduct of “the average reasonable claimant in light of all the circumstances.”

If “good cause” is NOT found, the “untimely” protest or appeal will be denied. If good cause is found, the judge will proceed to examining the disqualification issue(s). A denial for an “untimely” protest can be appealed up to the next level in the same way as any other denial.

SECTION 2: ISSUES THAT ARISE IN DISPUTES OVER UI BENEFITS

Many issues go into determining whether or not a worker will receive unemployment benefits. Some are highly technical, but when benefits are challenged, the issues most commonly raised by employers fall into these categories:

- Misconduct
- Voluntary Leaving
- Refusal of Suitable Work & Availability
- Employee Status

The two most frequent disputes—“voluntary leaving” and “misconduct”—have to do with the reason(s) why the individual is unemployed. Since UI benefits are intended for workers unemployed “through no fault of their own,” eligibility for benefits depends on who decided the worker would no longer be working at this job, and why.

The employer will often claim that it was the worker’s decision to leave the job or that the worker was terminated for conduct that harmed the employer’s interests or that was not allowed by the employer. If the UI representative or the judge accepts this version of events, the worker will be disqualified from benefits.

Section 3 of this handbook gives suggestions on how to present your claim if UI benefits are contested on the basis of “voluntary leaving,” and provides examples of cases where workers were approved for benefits even when their employers claimed that an employee had voluntarily left their job. Defenses for voluntary leaving include: (1) voluntary leaving with good cause attributable to the employer; (2) that the leaving was “involuntary”; (3) voluntary leaving to accept other employment; and (4) that the employer in fact terminated your employment.

Section 4 of this handbook gives suggestions on how to present your case if the employer claims you were fired for “misconduct,” but you believe that your behavior was not misconduct. In the unemployment insurance setting, “misconduct” is more than not meeting an employer’s preferences for how employees should work. In order to be disqualifying, the misconduct needs to involve intentional action against the employer’s best interests or reckless disregard for the employer’s best interests. You can learn more about these issues by reviewing the examples in Section 4.

Both voluntary leaving and misconduct are terms that the UI system uses to determine the reason for a worker’s unemployment, so there can be situations that involve both issues. It may be helpful for you to review both Section 3 and Section 4 whenever either issue is raised.

Section 5 of this handbook addresses disqualifications for “Refusal of Suitable Work” – which addresses whether a worker’s continuing unemployment is caused by a true lack of work, or by the worker refusing to work certain jobs. If an employer can show that you were informed of an available job but chose not to apply for it, or did not accept it when offered, you could be disqualified for UI benefits. The job could be with your former employer, or it could be somewhere else. If your claim was disqualified on this basis, you would need to show that the work available was not actually open or offered to you or was not **suitable** for you, based on any of several factors. Section 5 gives examples of how these factors have been judged in the past, and provides suggestions on how to present your case.

Section 6 provides advice on handling another issue, which arises less frequently than those above, but is still a significant potential disqualification for many workers: the question of whether those working for an employer were **employees or independent contractors**.

Sections 7 and 8 of this handbook give general suggestions on how to prepare for your hearing and how to present your case before the Administrative Law Judge. It is important to remember that a hearing may involve more than one of the potential disqualifications listed above. The notices of Determination and Redetermination identify the issues where they state the reasons for disqualification. You should be prepared to talk about each issue separately. In Section 7, you will also find information on resources and help you can get as you go through this process.

Important: Each section below explains the **burden of proof** that applies for each disqualification. The burden of proof determines which party must bring evidence at the hearing to prove their version of a disputed fact.

SECTION 3: VOLUNTARY LEAVING

If you voluntarily quit or voluntarily retire, you may be disqualified from receiving benefits. However, even if the Determination you receive from UIA says “Voluntary Leaving” as a reason for disqualification, you may be able to show that you did not leave the job voluntarily or that there was “good cause” for quitting.

In cases where a worker may be disqualified from UI benefits due to voluntary leaving, both the worker and the employer have the burden of proof at different times in the process—the responsibility to bring evidence for their version of the facts. In voluntary leaving cases, the burden of proof begins as the responsibility of the employer. First, the employer must provide evidence that the worker left his or her job voluntarily. Once the employer has done so, the burden of proof shifts to the worker to show:

- That leaving the job was *involuntary*—that is, the employee had no other option but to quit or retire and did so out of necessity; or
- That the employee quit for “*good cause attributable to the employer*”—a condition or event within the employer’s control that a reasonable person would find intolerable or unmanageable.

A. WAS IT TRULY VOLUNTARY?

Many people whose employment ends are surprised when they learn that the employer described their departure as voluntary. A worker may have felt forced into resigning or that they were terminated. Sometimes, the worker does something that the employer interprets as resignation, but the worker did not intend to resign. It is very important to look at the entire context surrounding the separation and not just how the employer chooses to characterize it.

A company eliminated day shifts for its security guards. When offered a choice between the afternoon or night shift, one guard said he wanted time to think about it. The employer interpreted this as resignation, but the UI ruling found that it was not voluntary and that the company “opted unreasonably to deprive the employee of any work.” The decision restored the worker’s UI benefits.

A worker became angry when her supervisor denied her request for a leave of absence. She left work for the rest of the day, and the employer said this meant she had quit. The court did not consider this voluntary leaving, however, because she never expressed an intention to quit.

A teacher received a negative evaluation. The school principal said if she resigned, the evaluation could be removed from her record, which would increase her chances of finding employment. The court found that this was not a voluntary quit, because the teacher did not initiate the discussion of resigning.

If you receive a Determination or Redetermination from the UIA that says you are disqualified for voluntary leaving, consider whether you intended to voluntarily resign or whether the employer demanded or strongly suggested that you resign in a way that made you feel like you had no reasonable alternative.

A type of “voluntary leaving” that many workers would not consider voluntary is failure to maintain some credential or license required by the job. Examples include failure to keep a current driver’s license, professional license, work authorization, or if a job had a residency requirement to live in the community where you work. In these cases, the worker is disqualified from UI due to “voluntary leaving” when: 1) the particular requirement is clearly documented ahead of time by the employer and linked to that particular job; and 2) the failure to comply with the requirement was within the control of the worker.

Most workers who no longer meet requirements of their job are disqualified from UI for voluntary leaving, but there are exceptions.

A Canadian nurse who had to leave her job because of changes in U.S. immigration law was not disqualified because the reason was beyond her control.

Following their graduation from nursing school, nurses obtained temporary state nursing licenses that allowed them to work as graduate nurses. But to get a permanent nursing license, they were later required to pass a state licensing exam. When the nurses did not pass, and therefore lost their jobs, their unemployment benefits were challenged. There was no evidence that the nurses were negligent in preparing for or taking their exams. The court held that this was not a voluntary leaving.

Besides the question of who initiated the separation—whether it actually was voluntary—there may also be a question of whether the worker had “good cause” to quit. The judge will examine whether the worker was compelled to leave by a workplace situation or treatment that was so intolerable, it would have made any reasonable person resign.

B. WHAT COUNTS AS GOOD CAUSE?

In cases where the issue is voluntary leaving, “good cause” is defined as a demand or action by the employer that would make a reasonable, average worker in similar circumstances feel compelled to quit.

Here are some examples of circumstances that have been ruled “good cause” for voluntary quitting, meaning the worker would not be disqualified from UI benefits.

- Harassment in the workplace and an employer’s failure to address the issue; being subject to abusive language accompanied by other mistreatment; suffering from discrimination on the job.

A teacher resigned after another teacher confronted her in a threatening manner. She complained to the school administration, but the school did not discipline the other teacher. This situation was ruled “good cause” when she sought unemployment benefits.

- When an employee is asked to do something illegal or unethical under the general standards of that particular business.

A worker in an automotive shop quit because the employer advertised a two-step rustproofing procedure for cars, but told him to provide only the first step of the rustproofing procedure. This was ruled good cause, so the worker received benefits.

- A choice between retirement and questionable recall prospects, or notification of an impending layoff.

A worker submitted her resignation several days after her employer told her she would be laid off at year-end. This was determined not to be voluntary because she had already effectively lost the job due to the employer’s action.

- Income reduction, including a significant loss in income, or non-payment of wages.

A part-time gas station employee quit when his employer announced his wages would be cut. The 1978 ruling on this case found the planned reduction by approximately 17 percent was a substantial reduction in income and thus good cause for voluntary leaving. However, in a 1989 case involving a pay cut of approximately 15% through the elimination of a worker’s overtime, the income reduction was ruled not substantial enough to be counted as good cause for voluntary leaving.

- A significant change in working conditions or terms of employment.

When a company added a non-compete agreement to its employee handbook, a worker refused to sign the new handbook and quit. The non-compete agreement was found to be good cause, as it materially changed the terms of employment.

- Compensation that does not amount to a living wage.

A salesman quit his job after a switch from salary and commission to straight commission dropped his income to \$21 per month. The ruling said, “Under such circumstance, is there really any choice?” and approved the worker’s UI claim.

- Work conditions that have a significant adverse effect on the worker's health have sometimes been considered good cause. (This is not predictable as it depends what is ruled more than a reasonable person would tolerate.)

Frequent changes in shifts took a heavy toll on a worker's physical and mental health. He asked to transfer to a different position, and when the employer refused, he resigned. This was ruled good cause for voluntary leaving; the worker received benefits.

Another ruling found good cause for a worker's quitting her job, because she left when she was diagnosed with breast cancer and the employer refused to allow her a change in responsibilities or a medical leave of absence.

- Scheduling difficulties have also at times been found to be good cause for voluntary quitting, but again this depends on a judgment of what is unreasonable.

A worker quit because her employer changed her schedule from six days a week to seven days a week, with on-call at nights, and no vacation except Christmas Day. This was ruled good cause for leaving her job.

There are also some reasons for resignation that have consistently been ruled **NOT** to be good cause.

- Retirement and Buyouts: Workers are often disqualified from UI benefits if they accept a retirement package or buyout option. The exception to this is if workers have good reason to believe their employment would not continue even if they declined the retirement or buyout offer—that is, if there is not a true choice.

A worker was disqualified for "voluntary leaving" when he chose to accept a buyout instead of accepting another position fifty miles away with the employer paying for all relocation expenses.

- Workers generally will not receive benefits if they voluntarily leave for personal or family-related reasons, even if they are compelling.

A woman quit her job because her long work hours made her husband suspicious that she was having an affair at work. The court disqualified her for UI, saying that "there was no distinct connection between the claimant's personal problems and her work."

- Workers who leave their jobs just because of general conflicts or unpleasant behavior by other employees or even supervisors will usually be disqualified.

A worker who quit because of her supervisor's constant yelling, and another who left her job after her employer made rude and sarcastic remarks to her, both were disqualified from UI for voluntary leaving; these problems were not considered "good cause."

With any type of "good cause attributable to the employer" case, it is important that, whenever possible, the worker give the employer notice of the issues that are bothering them to give the employer a chance to fix them.

C. LEAVING TO ACCEPT OTHER EMPLOYMENT

Unemployment benefits may be denied if you left your current job for another job. In these cases, to be able to receive benefits you must have (1) left the original job in order to take **permanent full-time work**, and you must have (2) performed services for that employer.

The amount of time you spent with the new employer will not matter, so long as when you took the new job, you thought that you would have permanent full-time work; you completed some sort of compensable task; and you were separated due to a reason that still qualifies you for benefits. The main purpose of this provision is to stop workers from taking lesser work and then claiming unemployment benefits against their previous employer. The court will look at the hiring procedure, the mindset of the employer when hiring, and your mindset when taking the job.

SECTION 4: MISCONDUCT

One of the most common issues involved when unemployment benefits are denied is that the worker was terminated for “misconduct.” Many employers believe—or try to argue—that “misconduct” is an applicable term for any conduct that the employer did not like and which led to the worker being fired.

However, the legal definition of misconduct that is used for unemployment insurance claims is very specific. It requires “deliberate violations” of workplace standards or “carelessness or negligence of such degree or recurrence” that it shows **an intentional and substantial disregard of an employer’s interests.**

Many workers can make a better case for benefits if they understand that Michigan courts have long established that the following failings **do not** count as misconduct: **“inefficiency, ... failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion.”**

The employer has the **burden of proof** in misconduct cases and must prove (1) **that the termination was for misconduct; and** (2) that the misconduct was in **connection with the work.** The employer will have to identify the specific action(s) or omission(s) that are being claimed as misconduct. The employer will also have to specify whether the alleged behavior that resulted in termination was a **single instance or a pattern of behavior** over time. You will want to focus on the specific behavior identified, and try to show how it does not demonstrate deliberate intent to harm your employer’s interests.

During hearings where misconduct is an issue, your employer might claim that you “intentionally disregarded” their interests by pointing to a handbook or some other type of work policy. They will try and show that the existence of this policy, and your awareness of it, proves that you *purposefully* broke the rules. However, there are ways to counter this.

Ask yourself:

- Had you ever seen the policy/handbook before? If so, **how long has it been?** If it was a long time ago, were you even aware of that policy when you acted?
- If you were aware of the policy, in what ways did you think the policy wouldn’t apply or that this **situation was different?**
- Did your employer have another **contradictory policy** that you were trying to follow when you allegedly broke the policy at issue?
- Was it **common practice** at your work to disregard this policy? Did the employer ever encourage or ignore the behavior they are now focusing on?
- Was the policy enforced the same for other employees? Was there **favoritism** that allowed some employees to ignore the policy?
- Was the policy **previously not enforced** or considered **minor** and now they are trying to say it was very important?
- Were you **warned** previously about this issue/policy? Were the warnings in writing? Did they warn you as to what discipline may follow?
- If they are pointing to past warnings/write-ups, did they give you **notice** of the write-up at the time of the alleged incident? Does it seem like they added it into your file after the fact?
- Did your supervisor have **discretion** to warn you, write you up, suspend you, or take other incremental action before termination and did they choose not to?
- Is the policy the employer is now citing the **real/initial reason you were terminated?** Can you introduce evidence that there was a different reason for your being fired?
- Were you written up or warned for refusing to do something that you believed was **unsafe or wrong?**
- Did the company offer **periodic evaluations/reviews** to help you improve?

Depending on your answers to these questions, you may be able to show that you didn't intentionally break the rules even though there may have been a policy of the employer.

The following are some common circumstances where employers have attempted to claim misconduct to disqualify a former employee from receiving UI benefits. Michigan law has consistently ruled that these are NOT misconduct for the purposes of denying a claim for unemployment compensation.

Issues about how you did your job:

- It is not misconduct just because your employer said you were not doing your job correctly.
- It is not misconduct if you showed bad judgment or negligence in an isolated instance. In fact, negligence will generally not count as misconduct unless it happens often or that your committed negligence on a job with great responsibility over life and/or property.

When an auto-hauler truck driver headed his truck under an overpass, it hit the overpass and caused more than \$16,000 worth of damage—because the driver had forgotten to lower a ramp. Although this act of negligence caused so much damage, because it was a single act it was ruled not to be misconduct.

- It is not misconduct if you break the employer's rules in order to do something that you reasonably feel is in the employer's best interests if you used your judgment and made what is called a "good faith error".

A gas station manager left his desk to help the cashier when a group of threatening individuals came into the gas station. On returning to his office, the manager found that cash was missing. Although police investigating the theft exonerated the manager, he was fired. But he was not disqualified for UI benefits because responding to the cashier's request for help was in the employer's best interests.

- It is not misconduct if you caused harm to your employer without realizing your action would be against the employer's interests.

A fish market worker took home rotting fish to use as bear bait, figuring it was of no use to the employer. He was fired for taking inventory without authorization, but the UI ruling determined this was not misconduct, so he was entitled to unemployment benefits.

- It is not misconduct if an illness or injury inhibits full performance of your job.
- It is not misconduct if your action was taken to obey a supervisor's orders.

Nursing home workers obeyed instructions to alter their time cards so the employer would appear to be following government requirements regarding staff-to-patient ratios. The employer then fired the workers in order to cover up its own wrongdoing. Because the falsification clearly served the employer's interests and was ordered by an administrator, the workers were not disqualified from receiving UI.

- It is not misconduct if you refused to do something that could endanger your health or well-being without being

Health Issues

When a worker loses a job because illness or injury interfered with his or her performance, there are a few issues to keep in mind in seeking unemployment benefits.

First, was the injury or illness caused by conditions at the workplace? If so, it may be appropriate for you to apply for workers' compensation.

Second, is the illness or injury a lasting disability or did it interfere with your work performance only for a limited time? If it is still affecting you and will prevent you from being available for full-time work, you may not be eligible for unemployment benefits. You should be prepared to address this point to the satisfaction of the UI representative considering your case.

On the other hand, if your doctor believes medical condition makes you unable to perform any job, and that this condition will last indefinitely/permanently, it may be appropriate to file to apply for disability benefits through the federal government.

properly informed of its safety—unless the assigned task is essential and in keeping with the nature of your job.

- It is not misconduct if the nature of your job includes discretionary decisions and you made an error in one of those decisions.

A service manager at a car dealership corrected discrepancies on employees' time cards rather than confronting them, because he wanted to maintain good rapport with his team. The employer considered this an error in judgment, so fired the manager—but because the judgment was within the discretionary character of his position as a manager, he was not disqualified for misconduct.

Issues unrelated to your job performance:

- It is not misconduct if you miss work because you must take care of an individual in dire, immediate need. The person does not have to be a relative, but you must demonstrate that the situation was an emergency, and you should still do your best to give notice to your employer.

A worker was fired after he missed two days of work because the person he lived with was hospitalized in a psychiatric emergency, and the doctor requested the claimant's presence. While the employer had the right to deny use of company leave for this absence, it was ruled not to be misconduct and so the claimant received UI benefits.

- It is not misconduct if you were involved in a physical altercation at work when you can prove that you were the victim, rather than the aggressor.

A worker's car hit another worker's in the factory parking lot. The two workers got out of their cars, and the one who caused the accident apologized—but the other one attacked him with a penknife. While the reason for the assault was not related to the job, because it occurred on company property it did count as misconduct. The worker who became violent was disqualified from receiving unemployment benefits, but the one who was attacked was not.

- It is not necessarily misconduct if you were fired because you were arrested or accused of criminal activity, as long as the arrest and alleged crime are unrelated to your job.

However, if you were not fired for the arrest but rather were fired because you missed work while incarcerated, that can disqualify you from receiving benefits. Under such circumstances, you may qualify for benefits if:

- (1) the crime was a traffic violation that resulted in less than ten days of consecutive absence;
- (2) your sentence provided for day parole, so you didn't miss work;
- (3) your incarceration did not result from a full due process of law including conviction and sentencing.

Allegations of Theft

Did you get fired because the employer claims you stole?

Being fired for theft can disqualify you on the basis of misconduct if the employer can prove four elements of the crime:

- (1) taking and carrying away
- (2) someone else's property
- (3) done with felonious intent and
- (4) without the owner's consent.

- It is not misconduct if you refuse to work days designated as Sabbath by your religion. The applicable rule refers to "conscientious observance of the Sabbath as a matter of religious conviction." Be prepared for potential difficulties if the employer can convince the UI decision-maker that your attachment to this religion or observance of the Sabbath is inconsistent or insincere.
- It is not misconduct if you get fired for giving notice that you planned to quit voluntarily. The benefits you can claim, however, will usually be limited to the time between when you were fired and the date you had named as your intended quit date.

SECTION 5

SUITABLE WORK AND AVAILABILITY

An unemployed worker may be disqualified from benefits if he or she refuses an offer of “suitable” work or is otherwise found not to be “available” for full-time work. Factors that determine whether a job is *suitable* include

- risks of the work to the worker’s health, safety, or morals;
- the worker’s physical fitness and prior experience/training;
- how long the worker has been out of work, the possibility of recall, and what the likelihood is of finding a job in his or her usual occupation;
- how much of a reduction in wages & benefits is at stake – the law provides that if the wage offered is at least 70% of the worker’s gross pay rate immediately before the worker became unemployed, the wage is suitable;
- the distance of the job from the worker’s home (relevant factors include commute/traffic and availability of reliable transportation).

In refusal of suitable work cases, the employer has the initial **burden of proof** to show:

1. that the employer **communicated an offer of work** to the claimant in a clear and unambiguous way;
2. that the offer was **specific**;
3. that the **claimant refused** the offered work; and
4. that the work offered was **suitable** (see factors above).

The burden of proof then shifts to the worker to show that when considering the suitability factors above, he/she had **good cause** for refusing the offer of suitable work.

Good cause is **not** found when the worker merely does not *prefer* the type of work being offered or where an indication of an *unwillingness* to work is found. Also, if the offered job has less *prestige*, *status* or gives you less *authority*, these are not likely to be considered legitimate reasons for refusing employment.

If your employer argues that you’ve turned down suitable work, you will want to identify specific factors to show that there was not a clear offer of employment, that you did not refuse the offer or that the work was actually not suitable, and thereby show that your refusal doesn’t disqualify you from UI benefits. One strong argument would be if the job offered would result in **substantial financial loss** for you. For example, a ruling that the job is not suitable will be more likely if you can show that it would cost you more to go to the new job due to distance or transit options, or that the job’s demands would interfere with your parenting so that you’d have to pay more for child care. In addition to financial burdens, a job can be considered unsuitable if it is available as the result of a **labor dispute** and/or requires a worker to join/resign/refrain from joining any labor union. A job that jeopardizes the worker’s **health or safety** may also be ruled unsuitable.

A counselor in a psychiatric hospital took a medical leave of absence due to stress brought on by incidents with violent patients. She also felt that staff shortages put her safety at risk. When her doctor released her to return to work, the hospital offered her the same position in the same facility. Out of fear for her health and safety, she refused it, and her doctor submitted a statement that she could work in the same capacity but not in the same environment. The court found that the worker’s decision, based on reasonable concerns and a doctor’s advice, did not disqualify her from UI benefits.

For a job opening and offer of employment to count as “available,” it must be made clear to the worker individually, orally or in writing. Posting on a bulletin board somewhere in the workplace doesn’t count as a job offer. Also, the job must be actually available at the time it’s offered.

SECTION 6

EMPLOYEE OR INDEPENDENT CONTRACTOR?

Whether you were an “employee” or an “independent contractor” can be critical in determining whether you are eligible for unemployment benefits. If you are considered an independent contractor you will not be approved to receive benefits. However, just because you are told that you are an independent contractor and treated as one by your employer does not necessarily disqualify you from unemployment benefits.

If you believe you’ve been unfairly misclassified as an independent contractor and it is preventing you from receiving unemployment insurance benefits, you should request a hearing.

The law says that if a person performs services under the “**direction and control**” of another person, then there is an “employee-employee” relationship and the worker is covered by the law. The UIA decision-maker will apply what is called the **Economic Reality Test** to determine whether you are in fact an employee. Under this test, the judge or other decision maker will examine a number of factors to determine your employment status:

- Whether the work performed is an integral part of the employer’s business;
- Whether the worker depends upon the wages for living expenses; works almost exclusively for one company or performs professional services elsewhere;
- Whether the worker brings their own equipment, materials, etc.;
- Whether the employer will incur liability if the relationship terminates before the end date mutually agreed on;
- Whether the worker holds him/herself out to the public as able to perform the same tasks;
- Whether the work involved is customarily performed by an independent contractor;
- Whether the services are part of a larger common task; and
- The degree to which the employer exerts control over how the work is done, how the employer pays for the work performed, the degree to which the employer controls maintenance of discipline, and the right to hire and fire employees.

For example, if a painter advertises in the local newspaper in order to get jobs, maintains her own brushes, ladders, and drop cloths, and buys her own paint—as well as maintains her own business hours and is paid by the job, she’ll probably be considered an independent contractor.

But another painter, who comes to work every day at the same company, uses paint, brushes, ladders, and other materials provided by the company. The company also sets the worker’s hours, and the worker does not do any painting work for anyone else because the job is full-time. This painter is an employee of the company. This would be true even if the company and the worker consider the worker to be an independent contractor, and even if they have a written “contract.”

Remember that no one factor of this test answers the question of whether one is an employee or an independent contractor. The judge will consider the “**totality of the circumstances surrounding the work and the employer’s business operation.**”

A hospital claimed that a doctor was an independent contractor because he did not receive fringe benefits, no taxes were withheld from his paycheck, and he was not subject to any control in the manner in which he performed his professional services for any given patient. The court found that he was an employee, however, because he could only assess fees within the limits prescribed by the hospital, was obligated to work at such times as directed by the hospital, understood that he could not perform services elsewhere, and his services performed were a part of a larger common task (that is, giving care to those in need). Furthermore, the equipment, medication and instruments he used to perform his job were provided by the hospital.

Be ready to demonstrate any fact that you think helps demonstrate you were an employee and not an independent contractor. A few precedents that may apply to your situation:

- **Salespeople** have been considered not to be employees when they have no set hours, sales quotas, or specific territories to cover; are paid only on commission and bonuses; are not required to be at the office; use their own sales equipment and their own transportation; and are generally not under the control or direction of the employer as to how they do their work.
- **Truck owner-operators** have been ruled employees when they work exclusively or almost exclusively for one company. This is the case even for truck owners who consider themselves to be independent contractors.

If you believe that you have been **misclassified** as an independent contractor, but are really an employee, you should request a hearing before an Administrative Law Judge.

If you are aware of a business that misclassifies their workers as independent contractors, contact the Unemployment Insurance Agency's **Fraud Hotline at 1-800-822-1122**. You can remain anonymous.

SECTION 7

PREPARING FOR THE HEARING

A. LOOK CAREFULLY AT THE NOTICE OF HEARING

Roughly ten days prior to your hearing before an Administrative Law Judge, you will receive a Notice of Hearing in the mail. This notice will contain important details on the *who, what, when, where and why* regarding your hearing. The **potential issues** that will be addressed at the hearing will be listed on the front of the notice, as well as the judge's name and the location of the hearing. The back of the notice will provide other important information regarding how to obtain an Advocate (also see Section 7B below), interpreter, and other suggestions. It is important that you notify the judge immediately if you need a **translator or any other accommodation**.

If you cannot attend the date that is listed on the hearing, you must submit a written request for a new hearing date to the judge's office and give the reason you are unable to attend. **Telephone hearings** may also be available in certain circumstances and are sometimes required when the parties are located far from the hearing location. Your Notice of Hearing will specify whether the hearing is to be a telephone hearing. If you feel you need to participate by phone, you should contact the judge's office to make a request.

B. GET HELP

When appealing a denial, you have the right to an attorney or an independent advocate. Independent advocates provide their service at no cost to you through the Advocacy Program operated by the UIA (see "Appointed Advocates" below). The UIA provides information on locating an advocate in your area.

If you are a member of a union, or were until you lost your job, contact your union representative as they may be able to provide help as well.

Appointed Advocates

Independent advocates are available through the UIA Advocacy Program to provide no-cost assistance and representation to unemployed workers and employers. All UIA Advocates have passed a comprehensive examination regarding their knowledge of unemployment insurance law and the procedures required in presenting a case.

To obtain the assistance of an advocate, you must file your appeal within 30 days of the date stamped or written on the UIA's Redetermination with the State Office of Administrative Hearings and Rules before calling the **Advocacy Program at 1-800-638-3994** (choose menu item #2), or 313-456-2314. You can call between 8:00 a.m. and 5:00 p.m., Monday through Friday. You should call as soon as you receive your Notice of Hearing.

Assistance cannot be provided to you if only one business day remains before the scheduled hearing date. Failure to obtain an advocate is not a sufficient reason for an ALJ to grant you an adjournment (postponement) of the hearing. Information is available for anyone who requests information from the Advocacy Program. An advocate will give his or her advice and opinion (known as "consultation") to you on any issue, as long as the issues do not involve labor disputes, TRA cases (cases under the Trade Adjustment Act of 1994, as amended), or certain other claims.

Other Resources

The Advocacy Program does NOT provide advocates for certain types of hearings. The Advocacy Program also does not cover advice at the pre-hearing Determination and Redetermination level or for further appeals to the Board of Review, circuit court, and beyond. For those issues, you should contact a private attorney or one of the following non-profit organizations:

- **Sugar Law Center for Economic and Social Justice**

www.sugarlaw.org

4605 Cass Avenue, Detroit, MI 48201

Phone: 313.993-4505 Fax: 313.887.8470

• Michigan Unemployment Insurance Project

www.miui.org

4750 Woodward Ave., Suite 308, Detroit, MI 48201

Phone: 313.833.1811 Fax: 734.388.8764

3131 S. State, Suite 302, Ann Arbor, MI 48108

Phone: 734.274.4331 Fax: 734.388.8764

C. OBTAIN WITNESSES

It is important to anticipate whether or not you will use witnesses to support your case. Witnesses include anyone with firsthand knowledge of the circumstances surrounding your job separation. Witnesses are especially important because you cannot rely on “hearsay” at the hearing (see Section 8B for more on hearsay). You or your advocate/attorney should contact these individuals to see if they would be willing to testify on your behalf. If a witness is not willing to testify at the hearing voluntarily, they can be **subpoenaed**. Witnesses can also **participate by phone** with permission from the judge. Prior to the hearing, you or your advocate/attorney should consider all the questions that you will ask each witness that will be called by you or the other side.

D. DOCUMENTARY EVIDENCE

Beyond using witnesses to support your case, it is also important to assemble documents, papers, records, emails, or any other type of evidence that may be relevant to the issues that are listed on the Notice of Hearing. Bring them to the hearing and the judge will rule on whether or not they will be admitted as evidence. If you are scheduled for a telephone hearing, you must send any papers or records that you wish to present to the judge *and* the other party **at least three days before the hearing date**.

If you would like a copy of all the information that the Unemployment Insurance Agency and the judge may have obtained throughout the course of your filing, you or your advocate/attorney should request your “Media File” by faxing a written request to (313) 456-2316. Include in your request a number where you can receive faxes. You may also be able to request the documentation of your claim from the judge. Your media file should include any paperwork that your employer sent in when the Agency was doing its fact-finding. This will help you anticipate what their side of the story will be.

E. REVIEW QUESTIONS AND STRATEGY WITH YOUR ADVOCATE/ATTORNEY

Prior to your hearing, you should meet with your advocate/attorney to go over the questions that they plan on asking you at the hearing and to discuss the best overall strategy is in framing your case for the judge. They should also be able to tell you more about the legal standard applicable to the issues involved at the hearing as well as how cases similar to yours have come out in the past (*also see Sections 3-6 above*). It is important to have these cases and legal standards in your mind during your preparations and testimony so that you are better able to emphasize similarities between your case and any previous similar case that was decided in favor of the worker. If there is a similar previous case that was not decided in favor of the worker, think about any important ways your case is different and emphasize those differences when telling your side of the story.

One other important preparation is to consider what you or your advocate, if you have one, will say in an opening or closing statement if the judge allows for one.

SECTION 8

THE HEARING

A. PROCEDURE

When you arrive at the hearing location, inform the clerk of your presence and/or sign in. The required parties and witnesses will be called into an office-like room where the ALJ will conduct the hearing.

At the beginning of the hearing, the ALJ will identify all the parties, representatives, and witnesses and briefly outline the issues to be dealt with during the hearing. The parties, representatives, and witnesses will be required to take an oath or affirmation to tell the truth. The judge may request some witnesses to be sequestered, which means that the witness must wait outside the courtroom while other witnesses are testifying. Some judges also allow each side to make an **opening statement**.

It is important to answer questions clearly and to speak at a reasonable volume because the hearing is being recorded. It is also important to do your best to control any emotions or grudges that may remain following your job separation.

The recording of the hearing will be used to create a typed transcript for use and review during any higher levels of appeal. Additionally, any documents used at the hearing will become “exhibits,” which will also be reviewed at higher levels of appeal. When you introduce exhibits for the record, clearly identify the document and state out loud what it shows.

Through this evidence and testimony, you should try and get as much of your story as clearly into the record as possible, because if you appeal the decision to the Board of Review, it is not likely that you will be able to present any more evidence or testimony.

Depending on the issues involved, and which party has the initial burden of proof, the side that goes first will have an opportunity to present their case by having their attorney/advocate/agent ask questions. This is called **direct examination**. See Sections 3-6, above, to see which sides have the initial burdens of proof for each issue.

During direct examination, your version of the facts is established through your testimony and the testimony of your witnesses. Facts are also established through documents and other physical evidence that can be introduced after a proper background and context to the document (called a “foundation”) are established to show it is relevant. To introduce documents, foundation is either established by agreement of the parties or by direct examination of particular witnesses. Some ways to establish a proper foundation for admitting a document through the testimony of witnesses is to elicit testimony that the document was prepared by the employer (and is an admission of the opposing party) or that it is a business record, which was prepared and kept in the normal course of business.

During direct examination, the judge will not allow certain “**leading**” questions. These are questions that give away (or give hints toward) the answer the questioner is looking for. For example, the question, “But you didn’t intend to leave the door unlocked, did you?” would probably not be allowed on direct examination. Instead, questions on direct should be more open-ended, like: “What happened next?”

During a party’s direct examination, they’ll also be allowed to present their **witnesses**. Witnesses may be present in person or may testify over the phone (with prior permission from the judge). They should testify regarding facts related to the case that they have personal knowledge of.

The judge may decide that the testimony of some witnesses is “cumulative,” meaning that the witness is testifying to the same set of facts as witnesses who have already testified. If that happens, only the testimony of one witness will be allowed by the ALJ.

At any time during the hearing, the judge may ask questions of his/her own or have you or a witness clarify an answer. Answer just the question that is asked by the judge or your attorney.

After a witness is questioned by the party who called the witness during direct examination, then the other party has the ability to ask additional questions, known as **cross-examination**.

During cross-examination, your Advocate may try and discredit the other side’s witness with evidence or testimony

that contradicts what they said during direct examination. This will help disprove any evidence used against you. The person asking the questions during cross examination is now allowed to ask the “leading” questions that are not usually permitted during direct examination. These questions usually start out with, “Isn’t it true that” - and tell a part of the other side of the story.

Throughout the proceeding, the judge will rule on objections as well as on what type of evidence can be admitted. Evidence that the ALJ determines is “hearsay” (see section below) may be excluded. After each side has had an opportunity to cross examine the opposing party’s witnesses, the judge may allow each side to make a **closing statement** to go back through their side of the story, the applicable law, and why they should win. The judge will then close the hearing. Parties will usually receive the judge’s decision within a couple of weeks.

B. HEARSAY

Hearsay is a statement that was made out of court by someone not present in court. Hearsay is sometimes offered at a hearing to substantiate a claim, but it will generally not be admitted into evidence. The theory behind preventing hearsay is that the person that made the statement should be at the hearing to testify about the truth of the statements. That way the person is sworn to tell the truth and they are subject to direct and cross examination. Therefore even things like notarized statements are considered hearsay at the hearings and probably won’t be allowed by the judge.

Some hearsay evidence is admissible in unemployment insurance hearings – as long as it is “evidence of the type commonly relied on by reasonably prudent persons in the conduct of their affairs and carries an inherent reliability for administrative purposes.” Examples include documents like drug tests, medical reports, doctor’s notes, etc. Certain business records can also be allowed, if the appropriate person is present to substantiate that they were kept in the ordinary course of the employer’s business.

C. REVIEW

- **Show Up To The Hearing.** This is your last chance to introduce new evidence and ensure that the record will reflect your claim for UI benefits in the light most favorable to you. If possible, bring an attorney or advocate (see Section 7B above).
- **Read The Notice of Hearing Thoroughly.** The front of your Notice of Hearing will contain important information on the *who, what, when, where and why* regarding your hearing. The potential issues that will be addressed at the hearing will also be listed on the front. Other important information regarding obtaining an Advocate, interpreter, and other suggestions will be on the back.
- **Bring as many documents as possible that support your case or the testimony of a witness.** Documents can include doctor’s notes, layoff notices, relevant letters or correspondence, written warnings, etc.
- During the hearing, **speak loudly, clearly and always politely.** The hearing will be recorded and transcribed.
- **Always know who has the burden of proof** and what must be done to meet this burden because whoever does this most successfully will ultimately win the case.
- It is important that you and your witnesses **speak truthfully and genuinely.**
- **Do NOT rely on HEARSAY!**

SECTION 9

FRAUD, OVERPAYMENT AND RESTITUTION

A. OVERPAYMENT OF BENEFITS AND RESTITUTION

During every stage of your application process and any appeals or hearings that may follow, it is important to be truthful when answering the Agency's questions. It is also important to **report all earnings** during your period of unemployment. This is true even if the job is casual, part-time and/or temporary. Otherwise you may have to pay back benefits you received and possibly even pay a steep penalty under the law's **fraud** provisions.

If you are charged under the Agency's fraud provisions, the **burden of proof** is on the UIA to establish fraud by "competent evidence." They are allowed to issue search warrants, subpoenas, and call witnesses against you. Even if this process does not lead to a conclusion that you intentionally committed fraud, if you received overpayment you will most likely have to make restitution by paying back the benefits you received.

The state demands restitution in almost every circumstance where the employer ends up prevailing. For example, even if you win at every stage below: Determination, Redetermination, ALJ Hearing, etc., but lose at a higher level of appeal, you still will be asked to pay back any benefits you received.

B. WAIVER OF RESTITUTION / HARDSHIP APPLICATION

There are a few circumstances in which you may not have to pay Restitution (or only have to pay partial Restitution):

- The UIA may waive restitution for a **clerical error**. However, if you knew that you should not have been receiving benefits, it won't matter that the mistake was a clerical error and restitution will still be required.
- If you received benefits and the employer submits a protest or new information **after the 20-day protest period deadline**, you will not have repay the benefits you received before the employer's late protest.
- If you do not have the money to pay the benefits back and are in extreme financial hardship, you may have your payments waived or reduced. You can fill out an **Affidavit of Financial Condition** to declare that you would not be able to make the required payments. To get this form, go to <http://goo.gl/p5Y1w> or call 1-866-500-0017 and select option 3 to request a waiver (Form 1795 Affidavit of Financial Condition). If you are able to make even partial payments over time, the Agency will likely work with you to develop a payments plan based on your income.
- In certain cases, the Agency may also waive restitution if the improper payment of benefits was **not the fault of the individual** and if repayment would be **contrary to equity and good conscience**. This option is *not* available in cases where there was an intentionally false statement, misrepresentation, or concealment of material information.
- The UIA has three years to determine (or Re-determine) that restitution is required and to bring a civil suit. If it has been longer than three years, they cannot demand that you pay restitution.

GLOSSARY

Administrative Law Judge (ALJ) – An officer of the State Office of Administrative Hearings and Rules (SOAHR) who hears and decides cases involving unemployment compensation.

Advocates, Advocacy Program – Advocates are people who have been trained to assist you in presenting your case to the Administrative Law Judge; their services are provided at no cost through the Unemployment Insurance Agency Advocacy Program.

Appeal – The process of challenging a UIA decision as to payment of benefits.

Board of Review – If either party disagrees with the decision of the Administrative Law Judge, they may appeal to the Board of Review, a separate agency that will reconsider the evidence and affirm, modify, or reverse the original decision.

Claimant – The individual seeking unemployment compensation.

Burden of Proof – The obligation of one party to a legal dispute to offer evidence to the decision-maker in support of that party's version of the facts. During the process of an unemployment benefits dispute, the burden of proof will start with one party, but may shift to the other party depending on the issues disputed. Each section of this handbook identifies the relevant burden of proof for a particular issue.

Determination – The initial decision by the Unemployment Insurance Agency as to whether unemployment benefits will be paid, how much will be paid, how much will be paid per week, and how many weeks will be paid.

Eligibility for Benefits – Whether or not a claimant meets the requirements to receive unemployment benefits (determined by monetary and nonmonetary factors).

Fraud – Knowingly applying for benefits for which you are not eligible

Good Cause – In the context of unemployment benefits claims, there are two uses of this term, with very different meanings.

- 1) In cases where claimants are disqualified from receiving benefits due to “voluntary leaving,” they may be able to win their case if they can demonstrate “good cause” for leaving the job that is “attributable to the employer”—a condition or event within the employer’s control that a reasonable person would find intolerable or unmanageable. See Section 3B of this handbook.
- 2) When a claimant submits an appeal or protest that is not within the required time limits, it will be ruled “untimely.” The claimant can then only have the other issues for his or her case considered if he or she can demonstrate “good cause” for the untimeliness of his or her appeal. See Section 1H of this handbook.

Hearing – A meeting before an Administrative Law Judge to hear and decide a claimant’s case.

Hearsay – Testimony not within the witness’s own first-hand knowledge. See Section 8B of this handbook.

Misconduct – See Section 4 of this handbook.

Protest – The process of challenging the Determination judgment.

Redetermination – If either party disagrees with the determination, they can appeal the decision. The Redetermination is a new decision issued by the Unemployment Insurance Agency after reviewing the case; it may affirm, modify, or reverse the original decision.

Suitable Work, Refusal of – See Section 5 of this handbook.

State Office of Administrative Hearings and Rules (SOAHR) – The agency that will arrange the hearing of your unemployment compensation case.

Unemployment Insurance Agency (UIA) – The agency of the State of Michigan that issues unemployment insurance.

Voluntary Leaving – See Section 3 of this handbook.

UNEMPLOYMENT INSURANCE AGENCY (UIA) RESOURCES

Visit the UIA's Website

If you have internet access, it is helpful to do the following:

Download and read through the UIA's "Online Claim Filing Kit"

- http://www.michigan.gov/documents/uia/OnlineClaimFilingKit_278831_7.pdf or <http://goo.gl/PhhFY>.

Print out the UI Benefit Application forms

- <http://www.michigan.gov/uia/0,1607,7-118-1360---,00.html> or <http://goo.gl/3OS7U>.

Refer to the UIA Fact Sheets

- <http://www.michigan.gov/uia/0,1607,7-118-26899---,00.html> or <http://goo.gl/FerjN>.

Call the UIA

If you do not have internet access, or if you have further questions, call the UIA toll-free at **1-866-500-0017** (1-866-366-0004 for TTY users).

Visit a Local UIA Office

The UIA has a number of offices you can visit. They are open weekdays, and the hours vary so you may want to call ahead. Typically the best times to visit is after 8am and before 3pm. and have temporarily expanded their hours from 7:00 a.m. to 4:00 p.m. Monday through Friday. These offices provide telephones and computers that you can use to file your claim, and there are UIA staff present to answer questions about filing for UI benefits.

To file an unemployment claim in person at one of these offices, you will need:

1. Your Social Security Number
2. Your Driver's License Number or State Identification or your MARVIN PIN (if you have one)
3. The names and addresses of employers you have worked for in the past 18 months and the last date of employment with each employer.
4. If you are not a U.S. citizen or national, you will need your Alien Registration Number and the expiration date of your work authorization.

UIA Office Locations

Detroit (temporary)

3024 W. Grand Blvd., Suite L-500
Detroit, MI 48202

Gaylord

400 W. Main St., Suite 102,
Gaylord, MI 49735

Grand Rapids

3391A Plainfield NE
Grand Rapids, MI 49525

Kalamazoo (temporary)

322 East Stockbridge Ave.
Kalamazoo, MI 49001

Lansing

5015 S. Cedar St., Lansing, MI 48910

Livonia

33523 W. 8 Mile Rd., Livonia, MI 48152

Mt. Clemens (temporary)

21885 Dunham Rd., Suite 7
Clinton Twp., MI 48036

Marquette

2833 U.S. 41 W, Marquette, MI 49855

Muskegon (temporary)

2700 Baker St.
Muskegon Heights, MI 49444

Pontiac (temporary)

51111 Woodward Ave.
Pontiac, MI 48432

Saginaw

614 Johnson St., Saginaw, MI 48607

Guide To Michigan Unemployment Benefits

The Sugar Law Center for Economic and Social Justice is very grateful for the financial support of the Michigan State Bar Foundation through an “Access to Justice” grant, which made possible preparation and publication of this handbook.

The Michigan State Bar Foundation’s funding for this publication does not constitute an endorsement of any content or opinion expressed in it. All content herein reflects the views of the Sugar Law Center for Economic and Social Justice.



4605 Cass Avenue, Second Floor ♦ Detroit, Michigan 48201
Phone: 313.993.4505 ♦ Fax: 313.887.8470
www.sugarlaw.org ♦ mail@sugarlaw.org

This handbook provides general information to people seeking unemployment benefits. Readers should not rely on the information provided herein as legal advice for any purpose, and should always seek the legal advice of competent counsel regarding specific facts and legal issues.

Sugar Law Center has made every effort to provide accurate and up-to-date information in this handbook, but the procedures and precedents described here are subject to change without notice. Use of this handbook is at your own risk, and the Sugar Law Center will not be held liable for any omissions, inaccuracies, technical or typographical errors. Sugar Law Center is not responsible for the content of websites referenced; links are provided as an information service only. It is the responsibility of the user to evaluate the content and usefulness of other sites.
