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## OHIO UNEMPLOYMENT BASICS

There have been continuous news reports lately about layoffs and loss of jobs, and it appears that such reports will be continuing into the near future. Accordingly, it is important for both employers and employees to think about Ohio Unemployment Compensation Benefits. These benefits are administered by the Ohio Department of Job and Family Services. Virtually all employees in the State of Ohio may be eligible to receive unemployment benefits during a period of partial or total unemployment. Claims for unemployment compensation benefits can be made online at [unemployment.ohio.gov](http://unemployment.ohio.gov) or by telephone at 1-877-OHIOJOB.

Generally, an individual may eligible for unemployment benefits if he or she:

1. Is unemployed at the time of filing;
2. Has properly filed a claim for benefits;
3. Has worked a sufficient number of weeks and earned sufficient wages in "covered" employment during the base period of the claim;
4. Did not "quit" his or her recent job without just cause or was not discharged with just cause;
5. Worked at least six weeks of "covered" employment and earned sufficient wages if he or she had a previous claim;
6. Is able to work;
7. Is available to work;
8. Is actively seeking work (unless on layoff and notified by employer that work will resume within 45 days);
9. Is unable to obtain suitable work. If an individual is offered work during receipt of benefits and does not accept work, he or she may be interviewed to determine whether the work is suitable and whether he or she had good cause to refuse.

In addition to the above requirements, special eligibility criteria apply if an individual is unemployed due to a labor dispute. Attendance in school can affect eligibility for benefits, depending on the circumstances, as it can affect an individual's ability and availability to work. However, attendance in certain approved training courses may not negatively impact an individual's eligibility for benefits.

Ohio law requires a person to serve a waiting week before receiving benefits. This is the first week for which the person meets all eligibility requirements, but for which no benefits are paid.

Many aspects of unemployment benefits depend on the particular facts and circumstances of a situation. More information can be found at <http://unemployment.ohio.gov/>.

## LEGAL UPDATE

### THE UNITED STATES SUPREME COURT EXTENDS THE ANTI-RETALIATION PROVISION OF TITLE VII.

On January 26, 2009, the United States Supreme Court issued its Decision in *Crawford v. Metropolitan Government of Nashville and Davidson County, Tennessee*. In this case, the employer conducted an investigation regarding rumors of sexual harassment by an employee relations director. Vicki Crawford and two other employees responded to questions during the investigation by describing numerous incidents of sexually harassing behavior by the employee relations director. The employer took no action against the alleged harasser, but fired Crawford and the two other accusers shortly after the investigation.

Crawford filed suit in federal court claiming a violation of Title VII. The case involved the "opposition clause," which makes it an unlawful employment practice for an employer to discriminate against an employee "because he [or she] has opposed any practice made an unlawful employment practice by this subchapter." 42 U.S.C. § 2000e-3(a). The district court granted summary judgment for the employer, finding that Crawford could not satisfy the opposition clause because she had not "instigated or initiated any complaint," but had "merely answered questions by investigators in an internal investigation." The Sixth Circuit affirmed the district court's decision, holding that the opposition clause "demands active, consistent 'opposing' activities to warrant...protection against retaliation."

The Supreme Court overturned the lower court decisions, finding that Crawford's description of the behavior of the employee relations director would qualify in the minds of reasonable jurors as "resistant or antagonistic" to the director's treatment. The Court noted an EEOC guideline that states that when an employee communicates to his or her employer a belief that the employer has engaged in a form of employment discrimination, that communication virtually always constitutes the employee's opposition to the activity. The Court determined that it was not required that Crawford initiate the complaint; but instead, a person can "oppose" by responding to someone else's question just as surely as by provoking the discussion.

**\*\*It is important for employers to continue to investigate claims of sexual harassment in the workplace, because investigation can be an important element of defending a charge.**

## COBRA

One issue people face in the event of unemployment is how to provide for health insurance. COBRA is a federal law that provides certain former employees and their families the right to temporary continuation of health coverage after the loss of one's job. A former employee and his or her family are eligible for COBRA continuation if they were covered by the employer's group health plan on the day before the qualifying event. Termination of employment is a qualifying event, unless it is for gross misconduct.

After the termination, the employee and/or family members must be sent an election notice, and the employee, spouse and/or dependent children have sixty days to decide whether to elect COBRA continuation coverage.

COBRA coverage becomes effective on the date that the previous health care coverage would otherwise have been lost because of the termination. COBRA generally provides for group coverage for a maximum of eighteen months, but under certain circumstances, coverage can extend to thirty-six months. The coverage provided under COBRA is generally identical to the benefits provided under the group plan. However, the new federal law discussed below permits health plans to offer different coverage as well.

If the employee, spouse or dependent children elect COBRA, they are required to pay for the total premiums. The total amount of the premiums can be very expensive, because ordinarily, an employer pays all or part of the group health premiums. Under COBRA, the former employee (and/or family) pays the entire amount, including the portion the employer previously paid, as well as the portion the employee previously paid. Additionally, there may be a two percent administrative fee.

The recent economic stimulus law, the American Recovery and Reinvestment Act of 2009, provides for a subsidy to reduce the premiums discussed above for certain former employees and their families. Employees involuntarily terminated between September 1, 2008, and December 31, 2009, with income below a certain amount, are eligible for the COBRA premium assistance, along with their families. The federal subsidy constitutes sixty-five percent of the premium and lasts up to nine months. For more information, consult with your group health plan or attorney.