

# 1 in 4 must fight for jobless checks

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As if getting laid off weren't bad enough, many unemployed workers are finding that their former employers are challenging their benefit claims. Here's how to beat back a challenge.

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Unemployment is at a 26-year high, and Americans are filing claims in near-record numbers.

Just days after losing their jobs, a huge portion of the newly jobless get a second nasty surprise: At least 25% of those who file unemployment claims will find that their former employers have challenged their rights to benefits.

"It felt like not only was I not valuable enough to be kept as an employee but that my former employer truly didn't care about me at all," says Roger Sheridan, an out-of-work midlevel manager in Chicago.

In the past 15 years, the number of employer challenges has more than doubled.

"High-turnover industries like retail, transportation and restaurants are fighting every claim because their unemployment rate assessment is so high," says Linda Konstan, a Denver consultant on employee issues and legal compliance.

Yet few workers may know they have the right to appeal or that their chances of success are pretty good if they move quickly.

## How the system works

For small-business owners, contesting claims can be crucial to company survival.

"I have to fight every one," says small-business owner Raul Diaz of Mobile, Ala. "I always feel bad fighting to prevent someone from collecting when I know they need it. But I also have to fight to keep my business open."

Only employers pay unemployment taxes: a federal tax that tops out at \$56 per worker a year and a state tax based on an employer's claims history and how likely that industry is to face job losses. Rates vary widely by state and by industry, but a company's "experience rating" can make a huge difference in its bottom line.

The minimum tax rate in Minnesota, for example, is 0.56% of the first \$26,000 in wages, and the maximum is 10.7%. That's a difference of more than \$2,500 per worker.

When workers are laid off or fired, they apply for benefits, affirming they are able to work and are actively seeking jobs. The state looks at the reasons for the job losses and notifies the workers of benefit approval or denial.

Lack of work is the most common reason for new claims, and that usually means weekly checks will begin to flow after the state's required waiting period. Benefits are typically denied if a worker quit voluntarily or was fired for misconduct.

Once the state has decided whether benefits are warranted, either side can appeal.

Your likelihood of receiving [benefits](#) varies greatly from state to state, depending on your state's eligibility requirements and legal standards around denials. For instance, if you live in Montana, you're much more likely to receive benefits than someone in, say, Georgia. More than 70% of Montanans who lose their jobs collect a check; in Georgia, that figure is just 34%. Nationwide, about 44% of the unemployed received benefits in 2008, according to the Department of

Labor. In addition to those whose claims were denied, some simply never filed, and others, such as the self-employed, were ineligible.

### It's about the bottom line

With most employers already running on skeleton crews, you might think there wouldn't be time to fight unemployment claims. Think again. Denver consultant Konstan says there's big money at stake for employers who win a challenge. "Each claim won can save an employer anywhere from \$30 to \$100 annually (in reduced premiums per employee). Or more, depending on how many claims are charged against them," Konstan says.

Some employers challenge every claim. Some outsource the task to companies that specialize.

Konstan says that not only are employer challenges increasing but that claims of misconduct now account for the majority of cases. Urban Institute economist and researcher Wayne Vroman says 16% of claims are challenged on misconduct grounds and 10% as voluntary separations.

The number of employers winning challenges varies by state, largely because the rules on what constitutes misconduct vary. Misconduct can include claims of insubordination and criminal behavior such as theft, sexual misconduct or even violence. The most common claims of misconduct, Konstan says, include comparatively minor infractions such as excessive tardiness and sick days or spending too much time on personal calls or Web surfing.

"You have to wonder if those whose claims were denied realized they're able to appeal benefit denials -- and possibly have the denial reversed," Konstan says.

### Getting what's yours

Misconduct is the most common reason for employer challenges. But misconduct is arbitrary, and its defining lines are, at best, blurry, says Albert Rizzo, an employment attorney in New York.

If you've just been handed a pink slip, Rizzo says, the first thing you should do, regardless of the reason you were given for being let go, is to file for unemployment benefits. "Whether you were fired for lack of work or a reason that may indicate misconduct, file a claim," he says. It's up to your former employer to prove you're not entitled to benefits.

If your claim is denied, you have the right to appeal within the time frame allowed by your state. "And you should *always* appeal," Rizzo says. "Show a little teeth. Don't just accept the determination based on an employer's challenge. You've got to be prepared to fight."

That's something Roger Sheridan knows firsthand. "I appealed my employer's challenge that I was incompetent and eventually won. It took more than two months and added a tremendous amount of stress to an already tense time, but I won."

The first step to appealing is being punctual because, Rizzo says, there's no time to waste. You usually have about 30 days to file.

Here are common types of employer challenges and what else you need to know to fight them:

**1. Your season ended:** You were hired for a specified length of time, and now it's time for you to go. "As a seasonal employer, we challenge unemployment claims filed by seasonal workers seeking benefits after their contracts end (at the end of tax season)," says Charles E. McCabe, the CEO of Peoples Income Tax.

**Best bet to win an appeal:** Many states, including Virginia, where McCabe's business is, interpret the end of the contract as an "involuntary separation," which means the employee receives benefits.

Bring a copy of your contract or any documentation outlining the terms of your employment when filing in person, or state the details of your employment terms when filing online. "Providing as much information upfront will give your state unemployment office the necessary information to approve your claim or decide in your favor should your employer contest it," Rizzo says.

**2. Your attendance isn't up to par:** You took too much time off to nurse a cold or couldn't get to your desk on time because your kid's school bus often ran late. Now you've been sent packing.

**Best bet to win an appeal:** If possible, compile information (even if it's approximate) on your attendance and the attendance records of fellow employees. If you can prove that your attendance was consistent with others' in your department or company, you may have a strong case upon appeal.

"You might be able to show you've been discriminated against," Rizzo says. Be advised you may need to hire legal representation to effectively argue this case, but Rizzo says that shelling out two to three weeks' worth of unemployment pay in legal fees can be "well worth it to qualify for benefits."

**3. You didn't get the job done:** Konstan says a lot of employers think that poor performance is grounds for disqualification. But not so fast. "Most appeals to 'inability to perform the job' challenges are determined in favor of the claimant," she says, especially if you can prove you weren't given the chance to improve.

**Best bet to win an appeal:** Konstan recommends asking for a copy of your personnel record ASAP, preferably before you file for unemployment. "You're entitled to it," she says.

If you can prove that you weren't given verbal and/or written warnings or that your employer didn't follow reasonable performance review procedures or those outlined in your company's handbook, Konstan says, you've got a good chance of winning the appeal.

"Employers have to notify you that you're not meeting their expectations, outline how to improve and give you a reasonable chance to improve," she says. And if your boss can't produce evidence that you were sufficiently notified about your poor productivity (including something signed by you indicating you were notified of the warning), chances are that he or she won't win the challenge.

**4. You didn't follow procedures:** Your boss says you consistently failed to follow procedures when taking sick days, spent too much time surfing the Net or texting your friends during work hours, or took too many coffee breaks.

**Best bet to win an appeal:** Prepare a compliance log. Track the days you've taken off and the means by which you notified your employer. Or the hours you spent surfing and how long you've consistently exhibited this behavior. Make sure to note things like comments made by your supervisor concerning your actions and any verbal or written warnings. Don't forget to note any understanding comments such as "It's OK if you're late" or "Don't worry about not coming in today" that your boss has made.

Rizzo says if you can prove your employer has previously ignored your attendance, failed to reprimand you for it or even cast it aside, you may have a case.

**5. You're insubordinate:** Your boss alleges you swore at her in a common area.

**Best bet to win an appeal:** Konstan suggests gathering any documentation and evidence, including the details immediately leading up to and following the event and witness accounts. "Depending on the circumstances, you may be able to justify your actions, but you're going to have to be very specific and detailed," she says.

If you can demonstrate your insubordination was provoked, Konstan says, "the determination may go your way."