

## Dept. of Employment Security vs Your Company Drug Policy

Your driver gets a positive test result, and your company's written policy requires that the driver be terminated. Therefore, because your driver is medically unqualified to drive and **you must follow your policy to the letter**, you terminate the driver. Where's the first place that driver most likely will go? The unemployment office!

While each state has different laws and regulations regarding eligibility for unemployment compensation, **these are the steps for Illinois employers to follow when they do not wish to be charged for that unemployment compensation.** Employers who are located outside Illinois should check with their state unemployment office or legal professional regarding eligibility in their state.

- When you receive a notice of claim from the Illinois Department of Employment Security Office, **make sure you reply immediately.** There is a very short deadline for your reply.
- On the notice of claim form, put "SEE ATTACHED," then write and attach a three paragraph note.

1. The first paragraph should be a work history on the driver (for example, when the driver was hired, date he/she received a copy of your written substance abuse policy, and any other pertinent information). In addition, mention that this driver and all your drivers are bound by federal requirements including their not using alcohol while on duty or drugs at any time, plus other facts that are specific to this case (such as an accident).

2. The second paragraph should state that this driver failed the drug or alcohol test. Indicate the drug for which he/she tested positive. Also, state that as a result of the positive test, he/she has deliberately and willfully violated the company policy and federal regulations. State that your company, as employer, has been harmed under Section 2840.25c3. Then state "We have therefore satisfied all the requirements under Section 602a."

3. The third paragraph should state:

- There was a reasonable rule and policy in effect at the time of the positive test.

- Copies of the policy indicating disciplinary action were provided to the driver well in advance of the test.

- The driver provided written verification of receiving the policy. Therefore, this was definitely a willful violation; and, as a result, has caused harm to your company due to his/her inability to drive and perform such duties for the company.

- Then state, "You must, therefore, as a matter of law, disqualify this employee under Section 602a." Make sure this attachment is dated and signed by the owner or appropriate officer of your company. Staple together the attachment, the notice of claim form, and the positive test result.

If you have returned all of the above information, it should be sufficient reason for the claim to be at least initially denied. If for some reason the claim is not denied, you will have the right to appeal. The employee will also have the right to appeal a denial. When you get the notice for the appeal hearing, immediately notify the Department of Employment Security that you want a telephone hearing.

At that point, if you participate in IMAWA's drug testing consortium, call Kim at IMAWA. She will coordinate the date and time for the appeal hearing with the Medical Review Officer (MRO) or Breath Alcohol Technician (BAT). The MRO or BAT will be your witness to confirm the positive test result. You will be charged for their expert testimony.

**REMEMBER: New evidence will not be allowed in the appeal hearing unless it has been previously provided to the other party.** That's why it's so very important to provide as much information as possible in the first process with the notice of claim form and your attachment. The hearing officer assigned to the appeal hearing will render the decision of the appeal.