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VIA E-MAIL

September 6, 2012

TO: AA Locals with Texas Members

RE: Early Out/Voluntary Severance

Dear Brothers:

Below are the two most frequently asked questions that we sent to the Texas Workforce Commission along with their answers:

1. If one of our members takes the early out package, would they still be eligible for unemployment if they would have been laid off anyway? *If the location is closing and all workers would be laid off no matter what happens, then this is a layoff under both unemployment and Trade. If the location is not closing and workers have not been informed of who will or who won't be laid off, taking the early out package is considered a quit.*

2. If a laid off member moves to another state to try and find work, would they still be eligible for unemployment from Texas? *Yes, if the worker has wages in Texas and establishes a claim in Texas both unemployment and Trade benefits would be paid by Texas. The worker would be required to register for work in the other state and begin searching for work in that state to remain eligible for benefits.*

Also, the following is additional information on how the Texas Workforce Commission views Early Out:

B. Early Retirement / Voluntary Severance [Top of Page](#)

More and more employers are adopting "downsizing" plans in an effort to reduce labor costs as part of an overall reorganization. These plans generally involve offering an incentive package to induce a number of employees to retire early or resign. The goal is to reduce the likelihood of layoffs. TWC deals with considerable numbers of unemployment claims from people who decided to take advantage of such incentives. Whether the employer will end up with increased unemployment costs in addition to paying out the incentives depends upon several factors:

1. *Probably the most important factor is whether the individual claimant was told by someone in authority that he or she was*


somehow targeted for layoff or was on some kind of "layoff list". Such a statement can literally lose the case for the employer, which makes it incumbent upon management to exercise tight control over who explains the program and in what way.

- 2. Another extremely important factor is whether the claimant stood to lose any vested benefits by passing up the program and being laid off later. If any vested benefits are on the line, that will probably be good cause connected with the work to quit, under the rule in the case of American Petrofina Company of Texas v. TEC, et al., 795 S.W.2d 899 (Tex. App. - Beaumont 1990, no writ). In that case, failure to quit by a certain time would have led to a drastic reduction in pension benefits already promised. Conversely, if no reduction in promised or vested benefits is threatened, the employer is in better shape with regard to a TWC claim.*
- 3. Finally, TWC looks at the ways a claimant's job would have changed if the incentive package had not been accepted. If the job was certain to change in substantial and adverse ways, the claimant may be deemed to have had good cause connected with the work to accept the early retirement incentive.*

Disqualification of claimants who voluntarily sign up for early retirement or resignation incentives usually occurs when it is clear that participation is purely voluntary, that no vested benefits are at risk, and that no one has been singled out for layoff or told they "had better take the incentive". Employers that allow employees to change their minds up to a certain point are even more successful in TWC claims. The rationale for disqualifying such claimants is that continued work was available when they left and that leaving a job to collect a short-term economic benefit is basically a personal reason not related to the work. See also ["Early Retirement - Voluntary Leave Incentives - Age Discrimination Issues"](#).

Please see <http://www.twc.state.tx.us/> for further information.

Fraternally,



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C: ATD Staff