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Lauren Russell, Molly DiBianca, William W. Bowser, and Scott A. Holt, Editors
Young Conaway Stargatt & Taylor, LLP

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UNEMPLOYMENT BENEFITS

Denial of overtime constitutes good cause for resignation

by Michael P. Stafford

Many employers work diligently to avoid unemployment claims and benefits awards that result in unnecessary tax increases. While it's usually impossible to prevent an employee from filing a claim, employers can avoid an award of benefits by carefully managing an employee's exit process. A recent decision from the Delaware Superior Court, which handles appeals from the Unemployment Insurance Appeals Board (UIAB), provides insight into how to handle unhappy employees and avoid claims.

Facts

Robin Densten was a trial support specialist working for the Delaware Department of Justice (DOJ). In that role, she "was responsible for the preparation of audio/visual and other demonstrative exhibits for the DOJ's prosecutors." Her job often involved last-minute high-priority assignments that caused her to stay late and work overtime.

Like many employers, the DOJ has a policy requiring prior approval of overtime requests. However, during the course of her tenure, Densten was regularly compensated for the overtime she worked despite not obtaining prior approval.

In 2013, after one of her requests for overtime was denied, Densten met with an HR representative and was told that the denial was due to her own failure to obtain approval before she worked the overtime. When she described the challenges she faced in obtaining prior approval because of the nature of her work, the HR person asked if she had considered looking for another job. Densten resigned after the meeting.

After quitting, Densten filed an unemployment claim. In Delaware, employees who voluntarily leave their jobs aren't entitled to unemployment benefits unless there is "good cause" for their resignation.

The UIAB agreed with Densten and held that the denial of her overtime request constituted good cause for her resignation under the circumstances, meaning a reasonable employee in the same situation also would have resigned. The DOJ appealed the UIAB's decision to superior court.

Court's decision

As the court noted, "Good cause for quitting a job must be such cause as would justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed." It can include "a substantial reduction in wages or hours or a substantial deviation in working conditions from the original agreement of hire." But it must be more than mere "unhappiness arising out of an unpleasant work environment." In addition, an employee must exhaust "all reasonable alternatives to resolve the issues" before quitting.

Here, the court agreed with the UIAB's determination that Densten's decision to resign was supported by good cause. In particular, the court noted that being obliged to work overtime for which you aren't subsequently compensated constitutes good cause. It found that the record supported the

UIAB's determination that the overtime denial was a "substantial reduction in pay."

Moreover, the court agreed with the UIAB's finding that Densten had exhausted all reasonable alternatives before resigning because she brought the problem to the DOJ's attention, described the problem to HR, and allowed enough time for the issue to be satisfactorily resolved before she left. In particular, the court noted that Densten could have reasonably interpreted the HR representative's comment about looking for another job as the DOJ's proposed solution to her problem and believed that she had exhausted her available internal avenues for seeking redress. *DOJ v. Densten,* C.A. No. N14A-09-008 RFS (Del. Super. Ct., July 6, 2016).

Bottom line

In this case, an unfortunate comment by an HR professional resulted in an award of unemployment benefits. According to the employee's version of events (since those are the facts as accepted by the court), she complained and was asked if she "had considered looking for another job." That is tantamount to saying, "If you don't like it here, you can always quit!" That is never a good response to a disgruntled employee, and it opens up a world of possibilities for a constructive discharge claim. Instead, the employee should have been counseled on the proper procedure and given a copy of the relevant policy, and the conversation should have been documented. Extraneous comments rarely help the employer. In this case, the HR representative refraining from making the comment could have saved the DOJ a bit of money.

The author can be reached at mstafford@ycst.com.