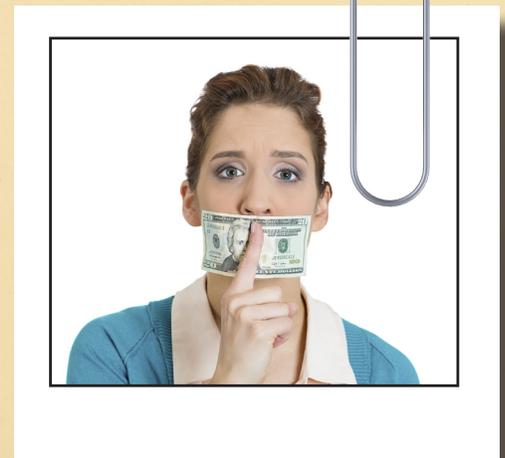


The 5 *Myths* That are Increasing Your Nonprofit's HR Costs



BUSTED

Why Read This?

Nonprofit leaders are great at tackling challenging situations, but sometimes you run into something totally... unexpected. Even after years of supporting nonprofits, here at UST we're still surprised by some of the curve balls you have to deal with.

Take Jim's story for example.

I was on the phone one day with Jim, the Executive Director of one of our member nonprofits, about his recent unemployment claims and how the UST program was working for his organization.

It turns out that not too long ago, Jim found out one of his employees was stealing from clients of his shelter. "I just couldn't believe someone would do something like that—steal from the neediest members of our community—but we had to face reality and dismiss the employee," he explained.

I was just as surprised as Jim that someone would do that. But you wouldn't believe what he told me next.

"Soon we get a notice from the state. The employee had filed for unemployment benefits! What I thought was an open-and-shut case, the state now saw as a charge against our organization. We would have to pay the same thief thousands of dollars in unemployment benefits."

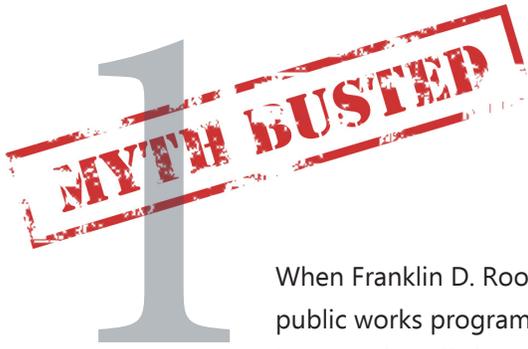
What did Jim do?

Well, he took the right next steps, the kinds you will learn about in the following pages. That's why we've put together this short piece — to help more organizations effectively reduce their HR costs by dispelling the five biggest myths about their unemployment claims.

Sincerely,



Donna Groh
Executive Director
Unemployment Services Trust



Myth: Nonprofits Have to Pay State Unemployment Taxes

When Franklin D. Roosevelt first introduced unemployment insurance benefits in 1935 as a part of his public works program, nonprofits were exempt from providing benefits to their former employees. But in 1972, that all changed. For the first time, nonprofits were required to begin providing unemployment benefits to their former employees.

Unlike their for-profit counterparts though, nonprofits were given an alternative to paying state unemployment insurance (SUI/SUTA) taxes.

Recognizing that money paid into the unemployment insurance system subsidizes other for-profit employers, the federal government allowed 501(c)(3) employers to elect to stop paying their state tax rate and instead reimburse the state dollar-for-dollar only when a former employee collected unemployment benefits. This nonprofit-only alternative (Federal Unemployment Act, Chapter 3, §3301-3311 of Title 26) can significantly reduce costs.

Where Do Your Unemployment Taxes Really Go?

While some of the money your organization pays in taxes goes toward providing unemployment insurance (UI) benefits to former employees, it only accounts for approximately \$1.00 in every \$2.00 you pay. The remaining dollar becomes a part of the state's larger unemployment insurance benefit pool and, depending on your state UI trust fund, helps pay for:

- Administration by the state
- Subsidizing claims for employers that have gone out of business
- Subsidizing claims of employers whose UI costs exceed the top of the tax bracket
- Claims paid in error by the state
- State UI fund deficits
- Paying off federal loans for state UI fund insolvency

While the UI tax system is usually most appropriate for organizations with fewer than 10 employees, nonprofits with more employees are often overpaying.

In an analysis of more than 200 nonprofits last year,
UST found \$3,532,485.26 in potential tax savings.

How do you know if you're overpaying? See page 10.

Myth: If an Employee Deserves to Collect Unemployment, No Need to Respond to the State's Request for Info



Employers are under stricter HR and unemployment regulations

In 2009, unemployment benefit payments hit an all-time historical high. That year, the government awarded more than \$80 billion in unemployment benefits to job seekers across the country. But not every dollar was deserved, and not every recipient was legitimate.

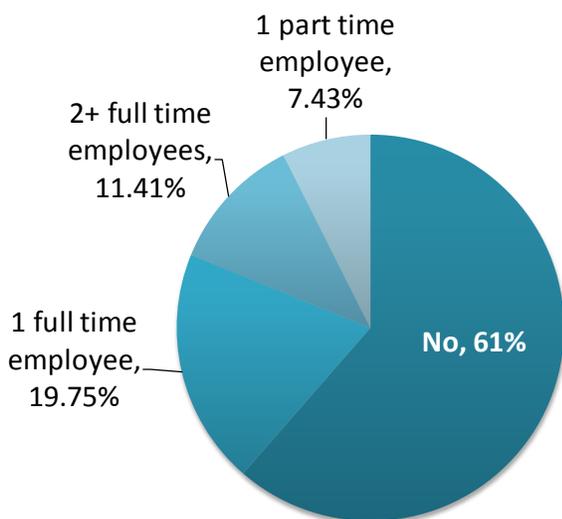
The U.S. Department of Labor estimates that between July 1, 2008 and June 30, 2010, more than \$8 billion were improperly awarded to unemployment insurance claimants. And studies show that the majority of improper payments were made because of incomplete or late responses from employers to the state's initial request for information about a claim.

UI Integrity Act and Associated Penalties

In an effort to reduce the amount of UI claims paid improperly and address this problem of non-responsive employers, the DOL implemented Sec. 252 of the 2011 Federal Trade Adjustment Assistance Extension Act. It is now commonly known as the UI Integrity Act.

The UI Integrity Act mandated that states require employers (or their claims administrators) to respond in a timely and adequate manner to all requests for information about unemployment claims. **If an employer fails to respond in a timely or adequate manner, they could have their ability to protest any future claims revoked and/or suffer additional monetary penalties.** Therefore it is more important than ever to provide all of the details and supporting documentation in a timely manner when requested, regardless of whether you think an employee should collect benefits or not.

In a 2013 study by UST, 667 of the nonprofits reviewed did not respond to the state's request for claim information. **This represented \$5,019,875 of unemployment liability exposure they could have potentially avoided.**



Do you have a dedicated HR position?

According to the March 2014 Nonprofit Quarterly Reader Survey of 880 nonprofits, nearly 40% of nonprofits are now concerned about HR compliance and changing regulations, including stiffer non-compliance penalties.

But with more than 60% of those same organizations reporting that they do not have a dedicated HR position, it can be difficult to ensure that all requests for information are responded to in a timely and complete manner. But doing so can make the difference in costly state penalties and unemployment claims.



Myth: There's Nothing I Can Do to Change My Nonprofit's Unemployment Claim Costs

State unemployment insurance was created for employees who are out of work through no fault of their own. However, there are some nuances related to whether the employee voluntarily quit, was laid off, or was fired, which can make a difference in whether it is a proper claim and is eligible for benefits.

Unfortunately, the state won't always automatically recognize or disqualify an improper claim, so you as an employer need to be vigilant — contesting a claim can mean the difference in costing your organization thousands of dollars. Often, the state will give the benefit of the doubt to the employee, although in recent years that is changing in states who have recognized this has led to high rates of error in payments.

States in the U.S. pay an average 10% of unemployment claims in error each year, adding up to billions of tax dollars.

U.S. Department of Labor

Claims = Higher out-of-pocket operating costs. Be smart about which claims to protest, and make sure to document, document, document along the way. While the following are good guidelines on when to contest a claim or not, you should consult with an expert and check your state laws.

Layoffs

If your organization experiences a reduction in workforce or must lay off an employee for no fault of their own, the employee would always be eligible for unemployment benefits. A claimant must be able to work, available for work and actively seeking work.

Voluntary Quits

An employee who voluntarily quits or resigns is only eligible for benefits if the employee can prove "good cause" — what the law calls a "compelling reason." A compelling reason to quit might be if they believed they would suffer some sort of harm, harassment or distress if they were to stay employed at the organization. Examples include:

- Sexual harassment of the employee
- Threat to health or safety of the employee
- Being offered the opportunity to quit in lieu of being fired

However, if an employee simply quits because they don't see an opportunity for advancement or because they don't like their job, they likely will not be able to collect benefits.

Terminations for Cause

If an employee is fired or terminated for cause, such as misconduct, they typically should not receive unemployment benefits. But this can be a tricky determination. (See the following page to learn more).



Collect benefits? Yes. An employee can claim benefits if they were terminated because they were not a good “fit” for the job for which they were hired.

Be careful using words such as “unsatisfactory performance” or “not a good fit” if the employee was actually able to perform the job but was negligent. There is a difference between able but not willing (misconduct), and simply unable to meet the requirements of the position.

The degree of the infraction matters, too. They can receive benefits if the violations were relatively minor, unintentional, or isolated — for example, they were late to work a few times. So even if you feel there is “good cause” the state may not agree.

Collect benefits? No. Typically if an employee is fired for misconduct they should not receive unemployment benefits. But remember, not all infractions that result in terminations are serious enough to qualify as misconduct.

So what’s the difference? Generally it comes down to “willful misconduct,” or actions that substantially injure the organization’s interests. If you recall the opening story, the state may not initially recognize all disqualifying events. The burden of proof lies on the employer to show — through proper documentation of the incident, written policies, as well as any written warnings leading up to it — that there was willful misconduct that broke organizational policies or caused extreme harm to the organization.



Examples of willful misconduct that could disqualify them for unemployment benefits:

- Numerous unexcused absences or tardiness
- Sexual harassment of coworkers
- Intoxication at work
- Stealing from the organization
- Extreme insubordination
- Violence toward coworkers or management

Examples of actions that could lead to being fired, but would not disqualify for benefits:

- Inability to perform the job due to lack of skills
- Inability to learn new skills
- Being inefficient or sloppy in their work
- Mistakes made in good faith
- Having a difficult or unpleasant personality
- Not getting along with coworkers

1 in 3

unemployment claims are protestable
found UST in a review of its 2,000 nonprofit
members’ 2013 unemployment claims

UST’s take: All too often we see nonprofits taking a back-seat position on unemployment claims and allowing former employees to collect benefits even when they really aren’t qualified by law. While this may seem benevolent, it is hurting the nonprofit who then later pays higher unemployment costs as a result—which ultimately takes money away from their mission and the causes they serve.



Myth: We Can't Win an Unemployment Hearing

After the initial claims protest, an appeal is your request to the state to review the facts because you believe the eligibility rules were not properly applied. You must be prepared to present facts and evidence, and appear in court.

For a hearing, you must be prepared with firsthand knowledge of the facts leading up to, and reasoning behind, the separation. Hearsay is less convincing than first hand testimony and allows room for doubt. However, additional witness testimonies can give your story greater credibility — lessening the speculation of bias.

Best practices include ongoing documentation of infractions, written acknowledgements from the employee, and objective (not emotion-based) details. For example, in an employee's file it would not be helpful to have a written statement from the manager such as, "They clearly just don't care about their work" because that is subjective and difficult (if not impossible) to prove.

One of the best ways to avoid a claims hearing is by providing your employees with an updated company handbook from the get-go, ensuring greater odds of office policy compliance... and proof of the written rules if it comes to a hearing. To uphold progressive disciplinary practices, there are key elements that must be documented:

- Date of infraction
- Details of infraction
- Explanation of corrective actions needed
- Statement of next disciplinary steps
- Signature of the employee

Checklist

- Documentation:** Date of infraction, Details, Corrective actions needed, Next disciplinary steps, Signature of employee
- Resignation Letter**
- Copy of policy(ies) violated**
- Witnesses**

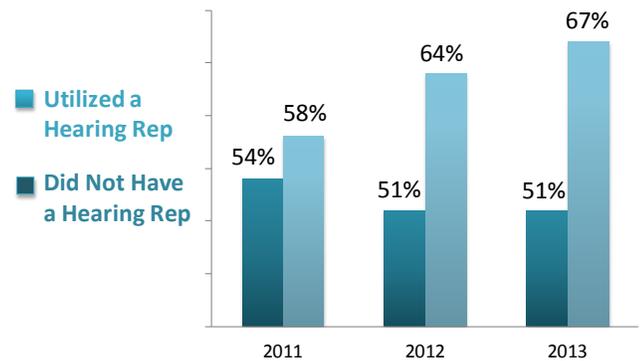
The Hearing Checklist

Bring at least 3 copies of documentation. This documentation shows the claimant and state that you are an organized and competent employer. Providing copies of relevant company policies, as well as a form of acknowledgement signed by the employee, can help prove that the claimant was aware of the rule(s) that were violated.

Skipping a hearing can be costly. You are far more likely to win if you show up in person. Attending by phone is the next best option. If you utilize a claims administrator and/or are part of an unemployment trust like UST, you may have access to a local Hearing Representative who can represent your case in court and is familiar with state laws as well as the local court system and judges, increasing your chances of winning, as shown at right.

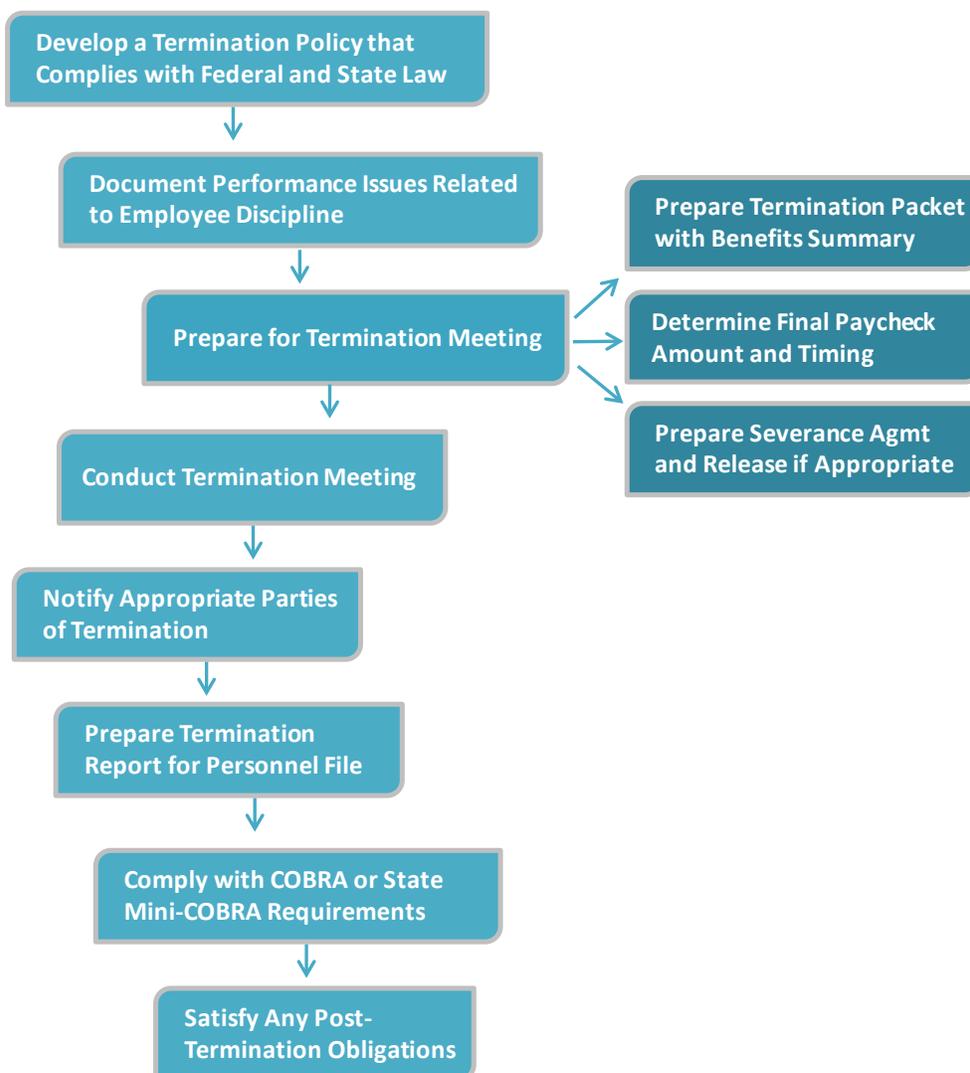
Documenting disciplinary actions could mean the difference between a hearing victory and a wrongful determination. Below are some steps to follow for involuntary terminations.

Employer Win Rates at Hearings Using a Hearing Rep vs. No Hearing Rep



In a UST study of 2,000 nonprofits, one can see how using a Hearing Rep has become more important than ever in recent years.

Involuntary Termination Steps for Proper Documentation



Source: *ThinkHR Live*

5 MYTH BUSTED

Myth: Unemployment Costs Are Just Unpredictable

You might feel like sudden staffing changes, whether layoffs or voluntary quits, can make predicting unemployment costs difficult. Since reimbursing employers must pay for unemployment benefits awarded to former employees as soon as they are charged to your organization by the state, your cash flow can be volatile if there are unexpected claims.

Create a reserve for unemployment costs.

One of the problems during the recent economic downturn was that many states just hadn't prepared. For years they had avoided raising taxes on employers, which meant that their state unemployment trust funds did not have a cushion when the recession hit – just as most people were needing these benefits the most. **The result? More than half of the nation's states went into multi-million-dollar deficits (26 state still owe \$14 billion total). Don't let that be your organization.**

A simple rule of thumb that UST uses for its nonprofit members is the 70/20/10 rule. Below is how UST member nonprofits set aside money in their account for claims:

Expected Claims. 70% is allocated toward anticipated claims costs for the year based on recent claims history (Okay, we use an actuary to determine this for UST member accounts, but you can take a look at your claims history and see a trend).

Unexpected Claims. 20% is a cushion for unexpected claims costs (In the UST program, if after the first three years claims are lower than anticipated, any excess beyond the necessary cushion is refunded to the organization).

Administration. 10% of a UST member's account allows for a dedicated claims representative, online claims management, stop-loss protection, investment management, an HR hotline, and more. For non-UST members, think of this portion as the funds you would need for legal counsel or other administration needs for your claims.



Think HR help for claims is costly? Think again.

About 50-75% of UST members each year participate at no cost because their investment return is enough to cover their entire UST account administration.

Benchmark Your Unemployment Costs

Now What?

With so few nonprofits knowing what their general unemployment costs are (44% according to NPQ), let alone what they should be benchmarking their costs against, it can seem daunting. And you may not have an actuary on speed-dial. Luckily, at UST we do.

Benchmarking only takes about 15 minutes.

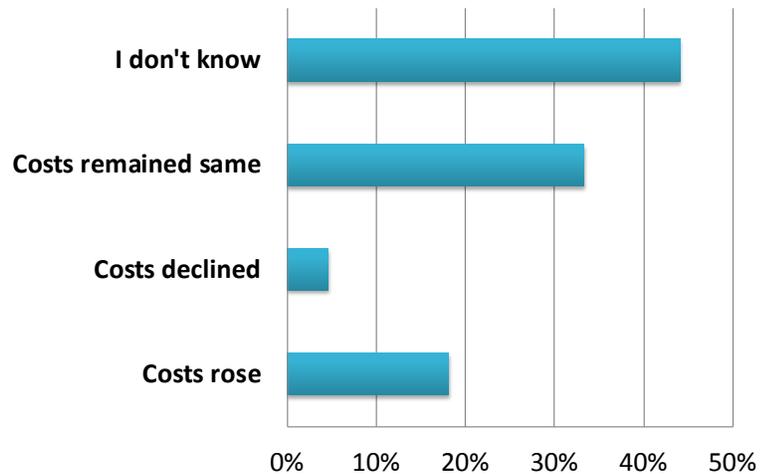
Step 1. Do you have more than 10 employees? If yes, go to Step 2. (If not, you are already doing the right thing by paying state UI taxes. The cost of a single unemployment claim could exceed how much you pay in taxes, so you're safest in the pooled tax system.)

Step 2. Is your organization a 501(c)(3)? If yes, go to Step 3. (If not, you don't have any option but to pay unemployment taxes. Since your tax rate is based on your claims, your best bet to lower costs is to ensure you're protesting all improper claims.)

Step 3. Open your file drawer, grab your unemployment tax rate / unemployment claims notices from the state for the past few years. While you're at it, locate your gross payroll for the prior year.

Step 4. Go to www.ChooseUST.org and enter in this information. If you're in the state unemployment tax system, we'll identify whether you're overpaying for taxes and create a complimentary 2-year savings projection of what it would look like if you were to become a reimbursing employer and join the UST program. If you're already reimbursing for unemployment, we'll analyze your claims history, and determine how much you should be setting aside for claims in the next two years and illustrate a proper reserve ratio per UST's actuarial model, as well as estimate investment income and expenses were your organization to join UST. The savings evaluation is completely complimentary and there is no obligation. In fact, it's a great way to show the executive team and your board that you are doing your due diligence.

Did your organization's unemployment costs rise, decline, or stay the same in the past 3 years?



From the NPQ Reader Survey 2014

What's Your State Unemployment Tax Opt-Out Deadline?

Nov 30	Dec 1	Dec 31	Jan 1	Jan 31	Feb 1	Jun 30	Qtrly
AZ, CT, WY	AK, AL, AR, CO, DC, DE, FL, GA, HI, IA, ID, IN, KS, KY, LA, MA, MD, ME, MI, MO, MS, MT, NC, ND, NE, NM, NV, OH, PA, RI, SC, SD, TX, UT, VA, VT, WA, WV	IL, NY, WI	NH	OK, OR	NJ	TN	CA, MN

Conclusion

Back to Jim's story. His next steps were actually pretty simple.

His UST unemployment claim advisor immediately stepped in when they got the notice of the claim. Said Jim, "Our UST claims advisor talked to us about how to approach the situation, what evidence to provide for the hearing, and who should be interviewed so that the entire process ran smoothly."

The hearing date came, and Jim explained: "We were prepared with documentation, our UST representative defended our position, and she gave a closing statement that won our case."

Jim's story was just one of the reminders we get now and then as to why UST's mission of "saving money for nonprofits" is still as relevant today as it was thirty years ago.



I had the right guys on my side!"

At UST we appreciate nonprofit employers like Jim who take the right steps and exercise best practices... contesting improper claims and keeping the right records.

And we're glad people appreciate us too, like Jim, who remarked, "I never paid attention to unemployment before it became important—but when it did, I had the right guys on my side!"

We hope the preceding pages helped provide some insight into best practices in unemployment claims and HR management, and why it's so important for nonprofits today.

When it comes to unemployment, being good stewards means that nonprofits must carefully review claims and make sure they are only allowing benefits to be paid on proper claims. Connect with UST to learn more and follow the latest trends and updates in human resources and more.

Connect with UST

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