

HOW INCREASED COST SAVING MEASURES IN HEALTH INSURANCE MAY CREATE ADDITIONAL COSTS IN UNEMPLOYMENT COMPENSATION

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While many public employers are actively pursuing measures to cut the rising cost of health care, an over aggressive strategy may create additional costs in unemployment compensation. Recently, the Pennsylvania Commonwealth Court issued a decision, largely reiterate prior case law, which provides employees who leave employment due to a unilateral change in health care benefits with unemployment compensation benefits. Brunswick Hotel and Conference Center v. Unemployment Compensation Board of Review, 2006 WL 2419019 (Pa. Commw. 2006). In Brunswick, the employee had been working for the hotel (including her employment with the prior owner) for over three (3) years. The prior employer provided full health insurance benefits. After filing bankruptcy, the business was sold to Brunswick. Brunswick retained the employee at a similar wage rate and promised to provide health care benefits. Over six months after the acquisition of the business, Brunswick had not begun to provide health care and the employee quit.

Under Pennsylvania law, an individual is ineligible for unemployment compensation benefits if his/her unemployment is due to voluntarily leaving work without a “necessitous and compelling nature.” 43 P.S. § 802(b). Typically, employees who quit work are ineligible for unemployment compensation benefits.

An employee who quits may be eligible for unemployment compensation benefits if he/she can prove that there was a “necessitous and compelling” reason to voluntarily terminate employment. Although Pennsylvania law does not define the term “necessitous and compelling,” our courts, through case law, have provided some guidance. An employee who claims to have left employment for a “necessitous or compelling” reason must show that: (1) circumstances existed which produced real and substantial pressure to terminate employment; (2) such circumstances would compel a reasonable person to act in the same manner; (3) the employee acted with ordinary common sense; and (4) the employment made a reasonable effort to preserve his/her employment. Brunswick, 2006 WL 2419019, *24, citing Fitzgerald v. Unemployment Compensation Board of Review, 714 A.2d 1126, 1129 (Pa. Commw. 1998).

In determining whether the employee’s voluntarily termination rose to the level of “necessitous and compelling,” the Court examined its prior holdings in Steinberg Vision Assoc. v. Unemployment Compensation Board of Review, 624 A.2d 237 (Pa. Commw. 1993) and Chavez v. Unemployment Compensation Board of Review, 738 A.2d 77 (Pa. Commw. 1999). In Steinberg, the employee quit her job after being notified that her health insurance benefits were going to be changed. The new health insurance benefits were at a reduced level and required a \$170.00 per month contribution. Without a comparable wage increase, the change resulted in a

14.2% loss of overall compensation to the employee. The Court determined that this change rose to the level of “necessitous and compelling” and awarded benefits. Steinberg, 624 A.2d 239.

In Chavez, during the course of negotiations for a new contract, the employer made unilateral changes to the employee health care benefits, including higher deductibles, the elimination of one of the choices of health care insurance, and the elimination of coverage for routine matters. Again, the Court determined that the employee had met the burden of establishing a “necessitous and compelling” reason and awarded benefits. Chavez, 738 A.2d 82. Likening the facts in Brunswick Hotel to those in Steinberg and Chavez, the Pennsylvania Commonwealth Court found the employee eligible for unemployment compensation benefits.

Although the Courts have not provided a bright line rule with respect to the reduction of health care benefits or the percentage of increase in contributions, it is clear that the complete elimination of health care benefits provides a sufficient basis to award unemployment compensation benefits where an employee has voluntarily ended his/her employment. While the number of employees who would totally forego continued employment upon a change to healthcare benefits may be small, in light of the foregoing case law, it recommended that employers work closely with legal counsel to determine if its health care strategy may lead to unexpected unemployment compensation costs