



LEGAL AND LEGISLATIVE UPDATE: MAY 2007

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SUPREME COURT ALLOWS USE OF NON-LAWYERS FOR EMPLOYERS IN UNEMPLOYMENT CASES

On April 17, 2007, the Pennsylvania Supreme Court held in Harkness v. Unemployment Compensation Board of Review that “a non-lawyer representative representing an employer in unemployment compensation proceedings before a referee is not engaging in the practice of law and that the Unemployment Compensation Law permits such representation.” In doing so, the Supreme Court reversed the Commonwealth Court's surprising decision finding that the use of a lawyer was required in unemployment matters.

In the Court’s analysis, it first examined whether representation in an unemployment compensation proceeding constitutes the unauthorized practice of law. The Court was ultimately concerned with protecting the public by “ensuring that the regulation of the practice of law is not so strict that the public good suffers.” In most cases, the Court found that individuals providing the payroll, tax, or employee benefit services for the employer will participate in unemployment compensation hearings to assist the Referee in the fact-finding process of the hearing, and not acting as a legal practitioner.

The Court then balanced this finding with the fact that “the unemployment compensation system must operate quickly, simply, and efficiently” and minimal amounts of money are typically in controversy. Under the circumstances, and unlike workers’ compensation proceedings, the Court found that a non-lawyer representing an employer is not engaged in the practice law.

Therefore, the Court concluded that a non-lawyer may represent an employer in unemployment compensation hearings. The Court also approved the legislative change to the Unemployment Compensation Law, enacted after the first Harkness decision, that permitted representation by non-lawyers to be acceptable in light of the conclusion that representation in unemployment compensation proceedings is not the practice of law. As a result, employers, like claimants, are free to represent themselves, or use any other representative of their choosing.

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