






Welcome 

- ✓ Link to a feedback survey to be distributed following the program, also available from main page of webinar
- ✓ For HRCI and CLE credit please complete the feedback survey
- ✓ Survey includes required HRCI assessment quiz



This seal of the seal is not an endorsement by the HRCI. The seal is a mark of the quality of the activity. It means the activity has met the HRCI Certification Institute's criteria to be approved for certification credit.


Copyright © 2010, Franczek Radelet P.C. All Rights Reserved. Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 1

 FRANCZEK RADELET
Attorneys and Counselors

Assessing & Defending Unemployment Insurance Claims in Illinois

August 26, 2010
Scott Cruz
sc@franczek.com
www.franczek.com


Copyright © 2010, Franczek Radelet P.C. All Rights Reserved. Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com

Agenda 

- ✓ Determining Eligibility for UI Benefits
- ✓ Disqualification of Eligible Employees
- ✓ Mechanics of a Claim for UI Benefits

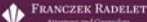
Copyright © 2010, Franczek Radelet P.C. All Rights Reserved. Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 3



Determining Eligibility for UI Benefits 


- ✓ Employee Eligibility
- ✓ Chargeable Employer

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com

Employee Eligibility 

- ✓ Earned wages
- ✓ Unemployed
- ✓ Underemployed
- ✓ Employee/Independent Contractor


Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com

Employee Eligibility – “Earned Wages” 

- ✓ At least \$1,600 during “base period”
- ✓ Base period is the first four of the last five completed calendar quarter years immediately preceding the month in which the “benefit year” begins.
- ✓ Benefit year is the one-year period beginning with the Sunday of the week in which the former employer first files a claim for unemployment compensation.
- ✓ e.g., If a claimant’s benefit year began on Sunday, March 28, 2010, his base period is the four calendar quarters from October 1, 2008 through September 30, 2009.


Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com



Employee Eligibility – “Unemployed” 


- ✓ Suspension
- ✓ Voluntarily Termination/Resignation
- ✓ Retirement
 - Chargeable employer or whom employee performed services during base period;
 - Pays all or some of the retirement payment;
 - Trust, annuity or insurance fund; or an annuity or insurance contract; and
 - Disqualifying income

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 7

Employee Eligibility – “Underemployed” 

- ✓ Definition
 - Income is less than the claimant’s weekly benefit amount
- ✓ Example
 - Claimant earns \$150 a week for part-time work, and weekly benefit amount is \$300, then the claimant is disqualified from receiving \$150 in benefits for that week.


Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 8

“Employee/Independent Contractor” 

- ✓ Generally, an “employee” is someone who performed services for an employer
- ✓ Presumption that the person is an “employee” entitled to benefits
- ✓ Burden of proof is on the employer

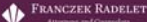
Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 9



“Employee/Independent Contractor”  FRANCZEK RADELET
Attorneys and Counselors


- ✓ Criteria for an independent contractor
 - The person has been and will continue to be free from control or direction over the performance of such services;
 - The person is either outside the usual course of the employer’s business **OR** the service is performed outside of all the places of business of the enterprise; **AND**
 - The person is engaged in an independently established trade, occupation, profession or business.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 10

Employee Eligibility  FRANCZEK RADELET
Attorneys and Counselors

- ✓ No hours requirement.
- ✓ Currently, in Illinois, an employee can receive up to 26 weeks of unemployment compensation.


Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 11

Chargeable Employer  FRANCZEK RADELET
Attorneys and Counselors

- ✓ The employer whose account will fund the unemployment compensation benefits.
- ✓ The last employer with whom the employee worked for 30 days in the past 18 months. The 30 days do *not* have to be consecutive.
- ✓ Practice Tip: For all new hires, review the employee’s performance after employee has worked, for example, for two or three weeks. If there are significant performance problems, terminate the employee before the 30 days expires or risk becoming the “chargeable employer.”

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 12




Disqualification of Eligible Employees 

- ✓ Discharge for Misconduct
- ✓ Specific Cases & Problems Involving Misconduct
- ✓ Voluntary Termination
- ✓ Specific Cases Involving Voluntary Terminations
- ✓ Refusal of Work
- ✓ Unavailable for Work
- ✓ Complete or Partial Disqualification

- ✓ Practice Tips


Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 13

Discharge for Misconduct 

- ✓ Definition of Misconduct
 - Misconduct is defined as the deliberate and willful violation of a reasonable rule or policy of the employing unit, governing the individual's performance of his work, provided such violation has harmed the employing unit or other employees or has been repeated by the employee despite a warning or instruction.

- ✓ Effect of Misconduct Finding
 - Termination for misconduct renders an employee ineligible for benefits until employee is re-employed *and* has had earnings equal to or in excess of his weekly benefit amount in each of at least 4 weeks.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 14

Elements of "Misconduct" Definition 

- ✓ Deliberate and willful violation
 - Question is whether the employee *intended* to do the act that caused the harm. Does not necessarily require an intent to harm the employer.


 - Misconduct does not include mere inefficiency, normal negligence or errors in judgment when made in good faith.

- ✓ Of a reasonable rule or policy of the employing unit
 - The rule or policy does not have to be written (but should be) or even articulated where the behavior violates a rule or policy that is self-evident ("common sense" rule, e.g., sexual harassment).

 - But proof of a rule or policy is *required* where an employee would not be aware that certain conduct is proscribed (e.g., janitor throwing out dirty uniforms: ["How is an employee to follow rules such as separating dirty uniforms from trash when he is never told that such a rule exists?"]).


Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 15



Elements of "Misconduct" Definition 


- ✓ **Governing the individual's behavior in the performance of his work**
 - If an employee violates a rule that does not govern the behavior of the employee in his work performance, this is not misconduct, even though the employer may feel the conduct is contrary to its interests.
 - Off-duty actions that materially jeopardize the public's perception of the employer's services or a claimant's ability to properly and fully carry out his duties involve the performance of work (e.g., teacher convicted of indecent exposure; truck driver convicted of a DUI).

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 16

Elements of "Misconduct" Definition 

- ✓ **Violation that harms the employing unit or other employees**
 - Courts are split on the question of whether actual harm, as opposed to potential harm, must be shown.
 - Courts are also divided on the question of whether the employer must present evidence of the specific harm/potential harm or whether the existence of either actual or potential harm can be presumed from the circumstances.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 17

Elements of "Misconduct" Definition 

- ✓ **Violation that is repeated after a specific warning or instruction**
 - Always good practice to have documented at least one prior written warning/counseling because a misconduct finding may be premised on an employee's cumulative rules violation.
 - Determine if the employee engaged in the same conduct on which employee was previously warned.
 - Stay away from laundry list of unrelated incidents.
 - "Final incident is what matters!"

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 18



Alcohol or Drug Use



- ✓ Alcohol or drug use either on the job or such that the employee is impaired at work generally constitutes misconduct.
- ✓ Drug or alcohol use that neither occurs on the job nor affects one's work may constitute misconduct if, for example, a urine or blood test taken at work reveals trace amounts of drugs and the presence of drugs violates an employer rule (and state or federal rule), e.g., school bus driver.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice.

www.franczek.com
19

Insubordination



- ✓ The refusal to perform a job or work function as directed by a supervisor.
- ✓ Being argumentative in a conversation with a supervisor, even in a loud voice, generally is not misconduct.
- ✓ However, directing an abusive expletive at a supervisor generally is misconduct even if the employee does not use profane language.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice.

www.franczek.com
20

Job Performance Problems



- ✓ Poor work performance, such as inefficiency or failure to perform to the employer's expectations due to inability or incapacity, inadvertence or ordinary negligence generally is *not* misconduct.
- ✓ "Stupidity" is not misconduct (your fault for hiring).
- ✓ Employee knowingly failed to perform to the best of his ability versus work assignment was simply beyond the employee's capability.
- ✓ If the performance fails to improve after repeated counseling and repeated failures harm the employer, the result *may* be different.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice.

www.franczek.com
21



Attendance or Tardiness FRANCZEK RADELET
Attorneys and Counselors

- ✓ Generally, attendance or tardiness is not misconduct if:
 - The claimant has a good reason for being absent *and* notifies the employer; or
 - The claimant has a good reason for *not* doing so because of something out of the employee's control (e.g., babysitter cancelled at the last minute).
- ✓ However, attendance or tardiness may be considered misconduct if:
 - The employee could have avoided being absent or tardy; or
 - The employee fails to notify the employer when he could have done so.
 - E.g.: Employee fails to call his employer for three days to report that he is ill and will miss work or fails to contact the proper individual to report an absence or tardy.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 22

Attendance or Tardiness – Practice Tips FRANCZEK RADELET
Attorneys and Counselors

- ✓ Issue written warnings for every attendance violation and tardy.
- ✓ On the final warning, specify that pursuant to policy, the employee must provide documentation upon returning to work to verify any further absence, tardiness or leaving early. Failure to provide this document could result in termination.


Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 23

Voluntary Termination FRANCZEK RADELET
Attorneys and Counselors

- ✓ The employee has chosen to leave employment for a reason *not attributable to employer*.
- ✓ A substantial and unilateral modification of the employee's:
 - working conditions;
 - duties and responsibilities; and
 - reasonable expectations associated with the job position.
- ✓ Attributable to the employer . . . benefits paid;
- ✓ Not attributable to the employer . . . benefits not paid.

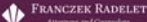
Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 24



Voluntary Termination - Exceptions 

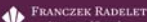
- ✓ Employee leaves work upon the advice of a licensed physician to care for a spouse, child or parent who is in poor physical health, and such assistance will not allow him to perform the usual and customary duties of his employment.
- ✓ Employee is deemed physically unable to perform his work by a licensed physician.
- ✓ The sole reason for leaving work was the sexual harassment of the worker, and the employer knew or should have known of the harassment prior to the leaving and failed to take timely and appropriate action.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 25

Voluntary Terminations – Constructive Discharge 

- ✓ Employee's working conditions are so intolerable that the employee is "forced to quit."
- ✓ Test: What would a reasonable person do under the circumstances?
- ✓ Example: An employee is transferred to a different location requiring a 4-hour daily commute.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 26

Voluntary Terminations – Constructive Quit 

- ✓ An employee's *own* action results in his inability or unwillingness to continue working and for a reason *not* attributable to the employer.
- ✓ Examples
 - "No-call, No show"
 - Union member employee fails to pay her union dues per the collective bargaining agreement, even after receiving notice that she must pay her dues to remain employed. Her refusal demonstrates her unwillingness to do so and to keep her job.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 27



Refusal of Work

- ✓ Refusing either to apply for available, suitable work when so directed by the IDES or to accept suitable work, results in a disqualification of benefits.
- ✓ However, the following are considered “acceptable” reasons for rejecting suitable work:
 - Significantly lower wages or skills
 - Safety or other potential hazards
 - Other “good cause” factors

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice.

www.franczek.com 28

Unavailable for Work

- ✓ School Personnel Disqualification
 - Individuals employed in *any capacity* for a non-profit or public educational institution, including an institution of higher learning are ineligible for unemployment benefits during extended vacation periods, school breaks, or time between terms and academic years.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice.

www.franczek.com 29


School Personnel Disqualification

- ✓ Substitute Teachers/Teaching Assistants
 - “Reasonable assurance”
- ✓ Retired Teachers
 - “Reasonable assurance”
 - Partial or complete disqualification for retirement benefits.
- ✓ RIF'd Teachers
 - No “Reasonable Assurance”
- ✓ External Coaches
 - “Reasonable assurance”
 - \$1,600 threshold

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice.

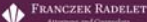
www.franczek.com 30



Considerations in Managing Seasonal Employment 

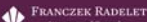
- ✓ Summer seasonal workers (students and teachers)
- ✓ Advertise for and hire only high school, college students and teachers looking for jobs for the period of June through August.
- ✓ Question the individual on why they only want summer work and what they will be doing in the fall.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 31

Partial or Complete Disqualification 

- ✓ Partial Disqualification
 - Arises primarily from income earned by a claimant during receipt of benefits, such as income from temporary work, workers' compensation and retirement benefits, but *not* severance pay.
 - Income is less than the claimant's weekly benefit amount, *i.e.*, "underemployed."
 - Example
 - Claimant earns \$150 a week for part-time work, and weekly benefit amount is \$300, then the claimant is disqualified from receiving \$150 in benefits for that week.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 30

Partial or Complete Disqualification 

- ✓ Complete Disqualification
 - Earning income equal to or greater than the amount of weekly benefits.
 - If a claimant earns the same or more from other "disqualifying" sources, the claimant is disqualified from receiving benefits for that week.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 33



Practice Tips for Establishing Disqualifying Events

- ✓ Documentation of Warnings, Suspensions and Terminations:
 - List the violation of the rule or policy; do not use general statements such as insubordination, attitude, poor work or lack of performance;
 - Time and date of violation;
 - State facts of violation; do not make general statements, personal comments or bring in additional issues;
 - Document the employee's reason for the rule or policy violation;
 - Give the employee an opportunity to read, sign and make comments on the document; and
 - If the employee refuses to read, sign and make comments, then have a witness sign the form that the employee refused to sign.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice.

www.franczek.com

Mechanics of a Claim for UI Benefits

- ✓ Challenges by Employer
- ✓ Written Determination
- ✓ Telephone Hearing
- ✓ Appeal to Board of Review & Circuit Court

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice.

www.franczek.com


Challenges by Employer

- ✓ A protest or challenge filed by an employer triggers the employer's right to receive an IDES Adjudicator's Determination as to the claimant's eligibility for benefits.
- ✓ A protest should contain the names, addresses and telephone numbers of any person having knowledge or information supporting the protest.
- ✓ The ability to make successful protests regarding disqualification issues requires a strong familiarity with all of the different grounds for disqualification.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice.

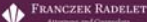
www.franczek.com



Challenges by Employer 


- ✓ An employer mindful of all possible grounds will have an advantage when it is most important – at the time of separation.
- ✓ Awareness of disqualification issues, and the supporting factual circumstances they require, often enables an employer to begin preparing grounds for disqualification through and including the date of separation.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 37

Challenges by Employer 

- ✓ Protests asserting only general conclusions of law may be deemed insufficient, and the protest likely will be disregarded.
 - Unacceptable Conclusions of Law
 - "The claimant quit."
 - "The claimant is not available for work."
 - "The claimant was fired for misconduct."
 - "The claimant has another job."
- ✓ The reasons supporting the protest must be factual, not conclusory in nature.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 38

Challenges by Employer 

- ✓ Acceptable statements of supporting facts:
 - The claimant came into my office the morning of 5/6/10 at 10:30 a.m. and told me to "take this job and shove it."
 - The claimant is unavailable for work because he has enrolled as a full-time student at Marquette University.
 - The claimant was given written notice of reasonable assurance that the school district will retain him as a substitute teacher on an as needed basis for the 2010-2011 school year.
 - The claimant voluntarily quit her employment because she informed us that she wanted to spend more time with her two children.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 39



Challenges by Employer

- ✓ If an employer anticipates a challenge to a UI claim, the employer should begin gathering and assessing all relevant information as soon as possible, preferably before receiving a Notice of Claim.
 - The policy or rule that was violated; all documented suspensions, warnings, counseling and coaching forms; performance improvement plans; and termination notice.
- ✓ The sooner you have all supporting material organized and complete, the better off you will be in trying to persuade an Adjudicator that your protest has merit.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice.

Challenges by Employer

- ✓ IDES Adjudicators greatly appreciate a well-organized package of information and material that supports a protest.
- ✓ The key here is “well organized.”
- ✓ Bad strategy:
 - IDES Adjudicators receive bundles of information, in no particular order, with the expectation that *they* will “sort through it”.
- ✓ Good strategy:
 - A well organized presentation makes the IDES Adjudicator’s job a little easier.


Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice.

Written Determination

- ✓ Following an investigation, assessment of the claim and review of information provide in support of a protest, the Adjudicator will issue a written Determination.
- ✓ The decision will describe the factual and legal basis underlying the Adjudicator’s written Determination.
- ✓ A claimant can appeal the Adjudicator’s Determination to an IDES Hearing Referee within 30 days after the Determination was mailed or hand delivered to the parties.


Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice.



Telephone Hearing 


- ✓ The referee/telephone hearing level is scheduled fairly soon after an Adjudicator's Determination.
- ✓ This is the time to submit *all* the evidence needed to support your position.
 - The claimant needs to receive all evidence you may conceivably use to support your position within 24 hours of the telephone hearing.
 - Failure to provide the claimant with all evidence within 24 hours will result in the evidence not being admitted during the telephone hearing and excluded from the record on appeal.
- ✓ However, while all documents may be admitted and incorporated into the record, they may be given little or no "weight."

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 43

Telephone Hearing 

- ✓ During the telephone hearing, matters of witness credibility or believability are left to the discretion of the Referee.
- ✓ Do not rely on second hand testimony, *i.e.*, "hearsay."
- ✓ All relevant individuals should be present and available to testify.
- ✓ The Hearing Referee's decision, theoretically, is based on an application of the facts to the law.
- ✓ Once the Hearing Referee's decision is issued, it becomes a guide for any basis to appeal to the Board of Review, upon an adverse finding.
- ✓ Formal rules of evidence do not apply to unemployment insurance telephone hearings.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 44

Appeal to Board of Review & Circuit Court 

- ✓ Employer or employee has 30 days to appeal the Hearing Referee's decision to the Board of Review.
- ✓ On appeal to the Board of Review, a party can argue against the factual findings as well as the manner in which the facts were applied to the law. An appellant can also argue that the decision applied the wrong law.
- ✓ Judicial Review from the Board of Review to the Circuit Court – 35 days after the receipt of Board of Review's decision.

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice. www.franczek.com 45



FRANCZEK RADELET
Attorneys and Counselors

Q & A

Copyright © 2010, Franczek Radelet P.C.
All Rights Reserved.
Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice.

www.franczek.com 46
