

NY Unemployment Benefits for Out-Of-State Telecommuters

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In a recent decision, the New York Court of Appeals held that a Florida resident “telecommuting” to her job with her New York employer was ineligible to receive New York unemployment insurance benefits. In reaching this conclusion, the court found physical, rather than virtual, presence in New York state, determines a telecommuter’s unemployment insurance eligibility. In so holding, the court relieved New York employers with out-of-state telecommuters from unemployment insurance responsibilities regarding those employees.

Unemployment insurance provides workers with temporary income while unemployed. To receive unemployment insurance benefits, workers must show that they are ready, willing and able to accept new employment; are not disqualified by virtue of misconduct or voluntary separation from employment without good cause; and meet the requirements for earned wages over a fixed period of time.

The worker’s former employment must also fall within the definition of “employment” under New York State Labor Law. The law’s definition of employment was derived from a uniform definition of employment that a number of states had previously adopted.

New York’s adoption of the definition achieves two objectives for unemployment insurance purposes. First, by allocating an individual’s employment in one state rather than dividing it among all states in which the employee has performed incidental work, each state is ensured that only one state will be responsible for providing the worker with unemployment benefits. Second, since it is most likely that unemployed workers will continue to reside in the state where they are physically present, that state is best suited to pay for the employee’s unemployment insurance benefits.

The Labor Law defines two types of employment: “work localized in state” and “work within and without the state.” Work localized in state includes employment that is performed entirely

within the state and work that is performed both in state and out of state, if the out-of-state work is incidental or isolated.

If a worker's work is not localized in a particular state, he or she may qualify as a worker within and without the state. To fall under this definition, the worker must perform some work within the state and show the employer's base of operations is within the state. If the worker cannot show the employer's base of operations is within the state, he or she must prove the job is controlled or directed from within the state or rely on evidence that he or she resides within the state. In making this proof, four factors are applied in the following order to determine an employee's eligibility: (1) employer localization; (2) location of base of operations; (3) source of direction or control; and (4) the employee's residence.

In the Court of Appeals case, the employee was a development technical specialist for Reuters America Inc. When personal problems forced her to relocate from New York to Florida, Reuters accommodated the employee's needs by allowing her to telecommute. Though physically located in Florida, the employee was linked to the Reuters mainframe in New York via an Internet connection.

From her home in Florida, the employee accomplished all of her responsibilities as if she were present in the New York office. During this time, the employee only visited the New York office once. Two years after establishing the arrangement, Reuters decided to dissolve it, and instead, offered the employee a position back in the New York office. The employee turned down the offer and eventually filed for New York state unemployment insurance benefits.

As the law mandates, the court examined the threshold issue of localization in determining the employee's eligibility. The employee argued that her work product was "realized" in the Reuter's mainframe in New York, so her employment satisfied the localization test. According to this argument, the employee's physical act of operating her laptop computer in Florida was incidental and irrelevant to the determination of where she performed her work.

In rejecting the employee's argument, the court held the claimant's physical presence in Florida determined her localization for purposes of interpreting and applying the law. The court reasoned that physical presence was the best way to measure localization noting - "Unemployment has the greatest economic impact on the community in which the unemployed individual resides; [and] unemployment benefits are generally linked to the cost of living in [that] area". By not meeting the localization requirement, the employee's claim failed and the court held New York would not be responsible for covering her unemployment insurance benefits.

Under this decision, New York businesses that employ telecommuters residing outside of the state are absolved from New York unemployment insurance benefits coverage for such employees.

While this decision offers unemployment insurance relief to employers, it may have been decided differently if the employee had spent more time traveling to, and working in, the New York office. Therefore, a telecommuter having more than incidental physical contact within New York could, perhaps, be eligible for New York unemployment insurance benefits.

The information contained in this column is not a substitute for professional counseling or advice.

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