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Legal Aid sees 56% rise in need for help

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Plain Dealer Reporter

Francine Thompson tried to apply for Unemployment Compensation when she got laid off last October, but the state told her she would have to wait until July because she had gotten a severance package. Then Thompson learned that co-workers with severance packages were already collecting.

"Why can't I?" Thompson asked.

The jobless computer analyst wanted to fight to collect sooner, but she couldn't afford a lawyer. She turned to The Legal Aid Society of Cleveland. So have a lot of laid-off workers.

"We have seen this marked increase in the number of people coming to us for legal help relating to employment issues," said Melanie Shakarian, the organization's director of development. "We are on pace to field 904 requests for help this year. That is 56 percent ahead of 2008 and 68 percent of two years ago."

She said the organization, focused on serving low-income individuals, is turning away as many as 1,400 people. Demand doesn't seem to be waning. At a recent advice clinic on employment issues at the Spanish American Committee in Cleveland, nearly 40 people showed up, about double the number who attend clinics focused on general legal issues, Shakarian said.

Some, like Thompson, hadn't been able to collect right way because their severance packages were misclassified. Others had problems with 401(k) accounts, online procedures and employers' claims that they had been fired for cause.

Private lawyers also are seeing more laid-off workers needing help, said Michael Brittain, president of the Cleveland Metropolitan Bar Association, some of whose members work on pro bono employment law cases for Legal Aid.

The demand has spiked with the unemployment rate. In December 2007, the official start of the recession in the United States, Ohio's jobless rate was 5.8 percent. In April, the last available figure, it was 10.2 percent.

Many of the new Legal Aid clients are laid-off professionals and other highly paid workers.

Without paychecks — and often without unemployment insurance — these workers now qualify as low-income.

Thompson, the computer analyst who had worked at her company more than 20 years, hesitated before deciding to go to Legal Aid. Since she had never been laid off before, even the thought of asking for such help was unnerving. But Thompson was determined to fight because she believed she had a good chance of winning. After asking around about the 50 employees who had been laid off, Thompson couldn't find another who wasn't collecting unemployment and severance at the same time.

At issue was whether her severance was allocated before she left the job. If so, she could start collecting unemployment soon after being laid off. If Thompson's former employer had allocated her severance after she was no longer with the company, then Ohio law requires the amount of the severance to be counted against the amount of the unemployment she would have received. Based on those figures, she would have had to wait nine months before drawing unemployment.

Legal Aid successfully appealed the decision for Thompson. She said it was a matter of her former employer never returning a form from the state requesting if her severance was allocated on the last day of employment.

Donald Boone was faced with not being able to collect unemployment at all. The foundry worker was discharged after his former employer said he had too many absences. A diabetic,

Boone said he had missed work for medical reasons. Using medical records and other documents, Legal Aid successfully showed how Boone's absences were excusable under the company's policies. This meant he could collect unemployment.

Legal Aid lawyer Anita Myerson said she sees more "unofficial layoffs" masked as firings that leave discharged workers unqualified for unemployment. She said money could be the motivation. The unemployment tax rate employers pay is based on experience, including how many workers they have laid off in the past. Companies with more laid-off workers pay higher rates.

A 51-year-old laid-off accountant never foresaw any problems collecting unemployment benefits. Everything appeared to be going smoothly until the way she answered a question on the weekly online form the state requires claimants to fill out. The question had to do with whether she had claimed a retirement payment. The woman, who asked to remain anonymous to protect her privacy, said yes, she had recently taken a distribution from her 401(k) account.

The state said it would deny her 16 weeks of unemployment. That was equal to the \$15,000 in her account, even though she withdrew only \$4,200.

After coaching from Myerson, the woman successfully brought an appeal saying that she should be penalized only for the withdrawal, not the rolled over amount.

Myerson tells clients not to make 401(k) withdrawals.

"It's counterproductive," she said. "You're taking away from your retirement and you're getting penalized for unemployment."

The laid-off accountant said she was left with few options. Her severance had run out. The COBRA premium was due. Medical insurance for her husband's medications ran \$2,500 a month. Besides, her financial adviser suggested she make a 401(k) withdrawal.

"This is the first time in my life I ever had to get unemployment," the accountant said. "How was I to know?"

Making a claim

Common pitfalls to claiming unemployment:

Severance: Make sure your employer allocates any severance package to your last day of employment. If it is allocated as income after your final day at work, the money will be counted against any unemployment benefits.

Initial denial: If you believe you are eligible for unemployment benefits, continue to apply even if you are denied. If you successfully appeal a denial, you will be able to collect for those weeks.

401(k): Try not to withdraw from your 401(k) once you are laid off. Not only will the amount of the distribution be deducted from any unemployment benefits, but also the rolled-over balance.

Absences: Keep records of absences and sick time. If your discharge makes you ineligible for unemployment, you may want to appeal. You will probably have to show that you were not in violation of any company policies — for example, those regarding sick time.

Free clinics

The Legal Aid Society of Cleveland will have free clinics, offering advice on unemployment and other issues. The next clinics are:

June 23: 2 to 5 p.m. First United Methodist Church, 312 Third St., Elyria.

June 27: 9:45 a.m. to noon, Thea Bowman Center, 11901 Oakfield Ave., Cleveland.

July 11: 9:45 a.m. to noon, Fatima Family Center, 6600 Lexington Ave., Cleveland. For information, contact Legal Aid at 216-687-1900 or www.lasclev.org.

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