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UNEMPLOYMENT COMPENSATION CASES BECOMING AN IMPORTANT BATTLEGROUND

How often do you neglect to adequately defend or respond to a former employee's claim for unemployment compensation benefits? Many employers defend these claims simply because they want to maintain a low insurance rate. However, the Alabama Supreme Court has given employers another reason to vigorously defend these claims—the results of an unemployment proceeding can be the difference between winning and losing a subsequent lawsuit.

In *Wal-Mart v. Hepp*, employee Peter Hepp filed for unemployment compensation benefits with the Department of Industrial Relations ("DIR") after being discharged for alleged misconduct. The DIR denied benefits, and Hepp appealed the denial to the appeals tribunal, alleging that he was terminated because he had filed a workers' compensation claim against Wal-Mart. A hearing was held on Hepp's appeal. Both Hepp and a representative from Wal-Mart participated in the hearing. Thereafter, an appeals referee determined that Hepp had been discharged for "misconduct connected with his work" because Hepp had violated Wal-Mart's policy. Hepp was disqualified from receiving full benefits.

Subsequently, Hepp brought a retaliatory-discharge lawsuit against Wal-Mart alleging termination for filing a workers' compensation claim. The trial court denied Wal-Mart's Motion for Summary Judgment, and Wal-Mart appealed the decision to the Alabama Supreme Court. The Court held that, under the doctrine of collateral estoppel, Hepp could not bring a retaliatory discharge claim because the DIR had already determined that Hepp was terminated for misconduct connected with his work.

The importance of the Hepp decision is clear: successfully defending unemployment claims can be huge for employers. If an employer prevails, the former employee may be barred from pursuing a retaliatory discharge action. At the same time, it can be perilous to attend an unemployment hearing without adequate preparation. More and more, we are seeing Plaintiff's lawyers attending unemployment compensation hearing in an effort to prepare for an ensuing lawsuit alleging retaliation, discrimination or some other employment-related claim. In essence, plaintiffs' counsel often use such hearings as depositions, discovering important information and forcing management representatives to answer questions under oath. Needless to say, a management representative who is not fully prepared for such a confrontation may find herself at the mercy of a plaintiff's lawyer and inadvertently compromising the company's defense of a significant lawsuit.

Given the increasing importance of unemployment compensation hearings, we strongly encourage management representative to give adequate thought and preparation to responding and defending such claims. You may also consider retaining the services of a lawyer, particularly when there is an EEOC charge pending or when there is a possibility of a retaliatory discharge suit.



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BALCH & BINGHAM LLP
LABOR AND EMPLOYMENT CONTACTS

BIRMINGHAM, AL

Edward S. Allen	<i>eallen@balch.com</i>	205.226.3413
Leslie M. Allen	<i>lallen@balch.com</i>	205.226.3484
Brent Cobb	<i>bcobb@balch.com</i>	205.226.3477
Aaron L. Dettling	<i>adettling@balch.com</i>	205.226.8723
Jenelle R. Evans	<i>jevans@balch.com</i>	205.226.8760
Monica G. Graveline	<i>mgraveli@balch.com</i>	205.226.8722
Douglas B. Kauffman	<i>dkauffman@balch.com</i>	205.226.8758
Lance W. Parr	<i>lparr@balch.com</i>	205.226.3429
N. DeWayne Pope	<i>dpope@balch.com</i>	205.226.3421
Lisa J. Sharp	<i>lsharp@balch.com</i>	205.226.8714
T. Dwight Sloan	<i>dsloan@balch.com</i>	205.226.3447
Christopher T. Terrell	<i>cterrell@balch.com</i>	205.226.8734

HUNTSVILLE, AL

David B. Block	<i>dblock@balch.com</i>	256.512.0105
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JACKSON, MS

R. Pepper Crutcher, Jr.	<i>pcrutcher@balch.com</i>	601.965.8158
Armin J. Moeller, Jr.	<i>amoeller@balch.com</i>	601.965.8156
David M. Thomas, II	<i>dthomas@balch.com</i>	601.965.8157
Rusty Turner	<i>rturner@balch.com</i>	601.965.8159

ATLANTA, GA

Gregory A. Bailey	<i>gbailey@balch.com</i>	404.261.6020
Charles J. Gernazian	<i>cgernazian@balch.com</i>	404.261.6020
Cary Ichter	<i>cichter@balch.com</i>	404.261.6020

MONTGOMERY, AL

David R. Boyd	<i>dboyd@balch.com</i>	334.269.3132
William P. Cobb, II	<i>pcobb@balch.com</i>	334.269.3128
Charles B. Paterson	<i>cpaterson@balch.com</i>	334.269.3143
Dorman Walker	<i>dwalker@balch.com</i>	334.269.3138

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