Online Viewers...

- Problems streaming? Try using another browser.
- If slides appear small, they are also available as a handout on the website.
- Submit questions to the presenter by clicking on the speech bubble icon at the bottom of the screen.
- An attendance code will be read in two parts during the presentation.
  - CLE credit is only available for live viewing.
  - To be eligible for CLE credit, report both parts of the attendance code into the online attendance form immediately following the presentation.
  - [http://law.marquette.edu/mvlc/attendance-form](http://law.marquette.edu/mvlc/attendance-form)

From 30,000 Feet: What is UC?

- Temporary (26 “weeks”)
- Weekly computation, based on wage history
- Income Support ($54 -- $370/week)
- If unemployed “through no fault of your own” (sort of)
- Weekly claiming and work search process
- Recently, a purposefully strewn minefield to maim the unwary
From 25,000 Feet: Applying & Claiming

- Apply on line. In week first claiming (Sunday-Saturday)
- Pin/SSN; Direct deposition or VISA debit card
- Employer history for last 18 months
- Weekly claim online or telephone. AFTER week claimed
- Work search IN the week claimed; record maintained online
- More Information online
  - Claimant’s Handbook
  - Employer’s Handbook
    - Details on hearing procedure
    - Details on substantive grounds to deny benefits

From 20,000 Feet: The Process

- Initial Claim Employers contacted
- Challenge by DWD or ER telephone interview(s)
- Initial Determination (quick/dirty; 1 page): 14 days to appeal
- Notice of hearing (approx. 2 weeks after appeal)
- Appeal Tribunal Hearing
  - public hearing
  - Sworn testimony/marked exhibits
  - 60-90 minutes
  - Decision in 10-14 days: 3-4 pages, findings of fact
- 21 days to appeal to Labor and Industry Review Commission (decision in approx. 3 months)
- 30 days for judicial review in circuit court

From 15,000: UC in relation to other employment disputes

- Limited “relief”: not reinstatement, not back pay
- Appeal Tribunal Decision prompt
  - Usually 45-75 days after separation from employment
  - Well before fair employment filing deadlines
- Appeal Tribunal Hearings
  - On the record
  - Under oath
  - Exhibits preserved
  - Cross examination
- Back pay received within 2 years UC overpayment
- UC Benefits possibly deducted from back pay award or settlement
From 10,000 Feet: What to learn in the initial claimant interview
• Where in the process?
• What is the appeal deadline? (14-21-30-45/90-30)
• Appeal filed?
• What is the Initial Determination(s)
  • Separation Issues [quit, discharge, leave, layoff]
  • Able & Availability Issues [old job; general labor market]
  • Claiming Issues
    • claimed on time;
    • failure to report wages;
    • work search
    • concealment (fraud)

From 5,000 Feet: Minimum Advice
ADVICE TO BE GIVEN
• Appeal ID and ATD
• Necessary to reverse
• Today after 5:00? Yes
• Simple; no basis needed
• Can always withdraw
• Keep filing claims
• Keep filing claims
• Keep filing claims

NOT ADVICE. SOUNDING BOARD
• Separation
• Quit or discharge
• Does it make sense?
• Able. Available.
• The value of 1 hour pay.
• “Concealment” [FRAUD]
• The Compound Question
• Employed or Independent K
• Self Employment

From 1,000 Feet: General Concepts
• Presumption of Eligibility/Burden of Proof
• Appeal Tribunal designed for self-representation
• High rate of Initial Determination reversal
• Quit disqualification preferable to discharge disqualification
• Work or self-employed income, even part-time, always (almost) preferable
  • Partial UC
  • A&A exemption
• Concealment means intent to deceive
At 500 Feet: Discharge

**Misconduct 108.04(5)**
- “Willful and substantial disregard of the employer has the right to expect"
- Lie, cheat, steal
- Multiple absences without notice or valid reason
- Except for drug, generally not applicable to off-duty conduct
- *Boynton Cab v. Neubeck*
- Statutory Boynton Cab “lite”

**Substantial Fault 108.04(5g)**
- Only slightly less disastrous in effect on claim than misconduct
- Within reasonable control of employee violating reasonable standard, but excluding
  - Rule infractions not repeated after warning
  - Inadvertent errors
  - Insufficient skill, ability or equipment
- *Operton v. LIRC, review granted*

From 500 feet: Quit 108.04(7)

- Harder for claimants to win, but less serious consequences (7 weeks + 14 WBR v. 6 WBR)
- “Good cause attributable to the employer” approximately "constructive discharge"
- Quit substandard work within 30 days (108.04(7)(e)
  - Lowest quartile wages or hours
  - Union member required/prohibited or labor dispute
- Quit to take exception (108.04(7)(L)
  - Same hours or wages
  - Longer term prospect or shorter commute
- OTHER EXCEPTIONS – read the statute 108.04(7)

At 500 feet: Able and Available

- Able: attached to the labor market and “has the physical and psychological ability to engage in some gainful employment DWD 128.01(3)(a)
- Available: full-time "suitable" work, but physical or psychological limits do not render "unavailable" DWD 128.01(4)(a)
- Any earnings in week satisfy A & A.
- Refusal of "suitable" work offer without cause, if there really was an offer. Labor standards (lowest quartile) is cause, as in 30 day quit.
500 Feet: Concealment

- 108.04(g)(1): “intentionally mislead the department” by withholding/hiding, or "making a false statement."
- THE COMPOUND QUESTION: “During the week, did you work or did you receive or will you receive sick pay, bonus pay or commission?”
- But 108.04(11)(g)3: DWD not required to prove “intent or design to receive benefits to which the claimant knows he was not entitled.”

Questions?