

THOMAS & COMPANY

SERVICE BULLETIN - KENTUCKY CLIENTS

KENTUCKY UNEMPLOYMENT NEWS

UNEMPLOYMENT HEARINGS PROCEDURE IN KENTUCKY

On April 26th, 2019 the Kentucky Court of Appeals issued a ruling which, if upheld, could have a major impact in the way employer's are able to approach participating in administrative unemployment hearings. Up until this ruling an employer could have a manager or other designated party represent their interests at an unemployment hearing, or designate a third-party company. Since these unemployment proceedings are administrative in nature, and relatively informal, the statute in Kentucky did not require that the representation be by a licensed attorney.

The Kentucky statute, KRS 341.470(3) provides that: *(a) Any employer in any proceeding before a referee or the commission may represent himself or be represented by counsel or other agent duly authorized by such employer; and (b) any person appearing in any proceeding before a referee or the commission is an officer of, or who regularly performs in a managerial capacity for, a corporation or partnership that is a party to the proceeding in which the appearance is made shall be permitted to represent such corporation or partnership and shall be afforded the opportunity to participate in the proceeding without restriction.*

The ruling issued April 26th found the above KY statute unconstitutional based on a 1998 Kentucky Supreme Court ruling surrounding a worker's compensation case which found that "Legal representation by a lay person before an adjudicatory tribunal, however informal,... as such representation involves advocacy that would constitute the practice of law." *Turner*, 980 S.W.2d at 564.

DOES THIS IMPACT OUR COMPANY'S PARTNERSHIP WITH THOMAS & COMPANY?

No, this does not impact our ability to process UI claims, audit your benefit charges or manage your UI tax accounts as this ruling only impacts the hearing procedure.

WHAT ABOUT PAST CASES?

The Court of Appeals did emphasize that the ruling regarding the constitutionality of this statute should only apply prospectively, meaning that it will not impact cases already decided prior to this ruling.

WHAT ABOUT UPCOMING HEARINGS?

Thomas and Company is currently working the with state agency to gather more information about the impact of this ruling and to provide our clients informed guidance for future hearings. It is our hope that Kentucky employers will still be given the opportunity to contest unemployment hearings without having to choose between the cost of an attorney at each hearing versus the potential impact on their state unemployment tax rates. As more details arise out of this decision we will be immediately informing our clients of our findings. If you have immediate questions please reach out to our VP of Regulatory Affairs, Mike Parker at MParker@Thomas-and-Company.com or the phone number below.

QUESTIONS? PLEASE CONTACT US

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