

Kentucky Employers Must Be Represented by Counsel in Unemployment Compensation Hearings, Court Rules

By Patricia Anderson Pryor, Katharine C. Weber &

May 7, 2019

Meet the Authors



Patricia Anderson Pryor

Office Managing Principal
513-322-5035
Patricia.Pryor@jacksonlewis.com



Katharine C. Weber

Principal
(513) 898-0050
katharine.weber@jacksonlewis.com

Related Services

Employment Litigation

Non-lawyers may no longer represent employers in unemployment compensation hearings in Kentucky, the Kentucky Court of Appeals has ruled. *Nichols v. Kentucky Unemployment Commission, et al.*, No. 2017-CA-001156-MR, 2019 Ky. App. LEXIS 73 (Ky Ct. App. Apr. 26, 2019).

The Court held the section of the Kentucky unemployment compensation statute that permits an employer to represent itself and authorizes a non-lawyer managerial representative to represent the corporation in administrative proceedings before the unemployment commission (KRS 341.470(3)) violates the Kentucky Constitution because it constitutes the unauthorized practice of law. Therefore, if an employer is not an individual or sole proprietor, it must be represented by counsel at any hearing or proceeding before the Kentucky Unemployment Commission.

Background

After he was terminated by his employer, Michael Nichols filed for unemployment compensation benefits. The Unemployment Commission originally determined that Nichols was disqualified from benefits. He appealed and an administrative hearing was held before the referee. The employer was represented at the hearing by the manager who had supervised Nichols and terminated his employment. The Commission affirmed the denial of benefits following the hearing. Nichols appealed to the Jefferson Circuit Court, which also affirmed the denial of benefits.

On appeal to the Kentucky Court of Appeals, Nichols argued (among other things) that the proceedings before the Commission were unconstitutional due to the non-attorney manager's appearance at the hearing.

Statute Unconstitutional

On review, the Court of Appeals explained that the statute, at KRS 341.470(3)(a), expressly authorizes "any employer" to represent itself or be represented by counsel in a proceeding before the referee or Commission. It also explained that KRS 341.470(3)(b) similarly authorizes a managerial representative to represent a corporation or partnership employer in a proceeding before the referee or the Commission.

While an individual employer or sole proprietorship had the right to represent itself in any administrative or legal proceedings, the Court of Appeals held that KRS 341.470(3) was unconstitutional as applied to any other employers because it violates the separation of powers provisions of the Kentucky Constitution by permitting the unauthorized practice of law.

The Court reversed the decision of the Jefferson Circuit Court and remanded the action

back to the Commission to hold a new hearing in which the employer was represented by counsel.

The Court decision is prospective only. It will not invalidate decisions resulting from hearings that occurred prior to its issuance.

Implications

The Court's decision overturns decades of standard practice in Kentucky and will increase employers' cost to challenge an unemployment claim. Kentucky employers should retain counsel for any future Kentucky unemployment compensation hearings.

Please contact a Jackson Lewis attorney with any questions about this case or other workplace laws.

©2019 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.