

## KD Alert: THIRTY YEARS OF UC LAW REVERSED! – Voluntary Retirees are Eligible for Unemployment Benefits

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### Introduction.

Reversing thirty years of jurisprudence to the contrary, the Pennsylvania Supreme Court has declared that employees who accept early retirement incentive plans are eligible for unemployment compensation benefits. Under Section 402(b) of the Unemployment Compensation Law (“UC Law”), unemployment compensation benefits are generally unavailable to employees who voluntarily resign their employment unless such employees can demonstrate “necessitous and compelling reasons” for leaving their employment. 43 P.S. §802(b). The “Voluntary Layoff Option” proviso of the UC Law (the “VLO Proviso”) is, however, one of the exceptions to that general rule. See *Id.*

### The VLO Proviso.

The VLO Proviso permits employees to receive unemployment compensation benefits when they exercise “the option of accepting a layoff, from an available position pursuant to a labor-management contract agreement, or pursuant to an established employer plan, program or policy.” See *Id.* For the last thirty years, the Pennsylvania Commonwealth Court has restricted the VLO Proviso, declining to apply it to employees who voluntarily accept severance or retirement incentive plans offered by their employers. See e.g. *Renda v. UCBR*, 837 A.2d 685 (Pa. Comwlth. 2003); *George v. UCBR*, 767 A.2d 1124 (Pa. Comwlth. 2001); *Flannery v. UCBR*, 557 A.2d 52 (Pa. Comwlth. 1989); *W.R. Grace & Co. v. UCBR*, 455 A.2d 729 (Pa. Comwlth. 1983).

The Pennsylvania Supreme Court reversed that line of cases in *Diehl v. Unemployment Compensation Board of Review*. The employee in *Diehl* accepted an early retirement package after his employer initiated a workforce reduction plan in 2008. The UCBR’s denial of unemployment compensation benefits to *Diehl* was affirmed by the Commonwealth Court which found that the VLO Proviso applies to “voluntary layoffs” not “early retirement incentive plans.” On appeal to the Pennsylvania Supreme Court, the employee disputed the Commonwealth Court’s distinction between a “voluntary layoff” and “early retirement,” arguing that the term “layoff” applies to both temporary and permanent terminations.

Justice Max Baer, writing for the four-justice majority, declared that the UC Law does not preclude application of the VLO Proviso to early retirement plans offered pursuant to employee initiated workforce reductions. Citing *Black’s Law Dictionary*, the Court found the term “layoff” is commonly applied to both temporary and permanent separations initiated by the employer. But the question remained whether a voluntary early retirement plan offered pursuant to an employer-initiated workforce reduction is the equivalent of a “layoff.”

### What is a “Layoff”?

The Court noted that the VLO Proviso’s use of the term “layoff” was ambiguous. Moreover, as the term appeared within a benefits section of the UC Law, the Court was obligated to interpret the ambiguity in favor of the employee. As such, the Court found “no language that prevents the interpretation of the term layoff to include this employer-initiated, early retirement packages [sic] offered

pursuant to a workforce reduction.” Reversing the Commonwealth Court’s decision, the Supreme Court declared that the VLO Proviso applies to “otherwise eligible employees” who accept early retirement plans offered pursuant to an employer-initiated workforce reduction.

#### Impact on Employers.

It is too soon to assess the full impact of this major shift in unemployment compensation law. But, one thing is clear: Employers who offer early retirement incentive plans as part of a workforce reduction will see an increase in claims against their unemployment compensation policies. Employers should, therefore, consider the additional costs they will incur while identifying the incentives provided as part of any early retirement plans. In addition, extra care must be taken when drafting these plans so as not to run afoul of the Older Workers Benefits Protection Act.