



# UI CLAIMS APPEAL HEARING WORKSHOP



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# Our Goals for You

Participate and answer questions

Help a fictitious employer prepare to participate in an unemployment hearing

Evaluate the evidence presented at a hearing

Present more effective evidence and testimony in future cases

Have fun!

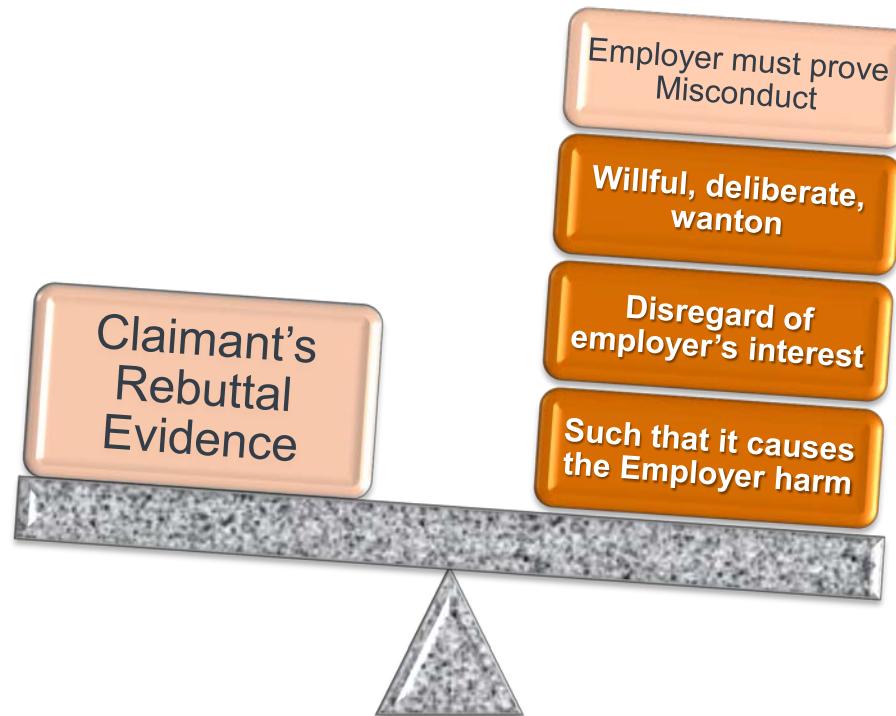
# Agenda

Prep for the hearing – audience participation

Mock Hearing:  
Bobeck v.  
Holmes  
Department  
Store

Questions and  
Comments

# Discharge Case - The Burden of Proof



# Case Summary

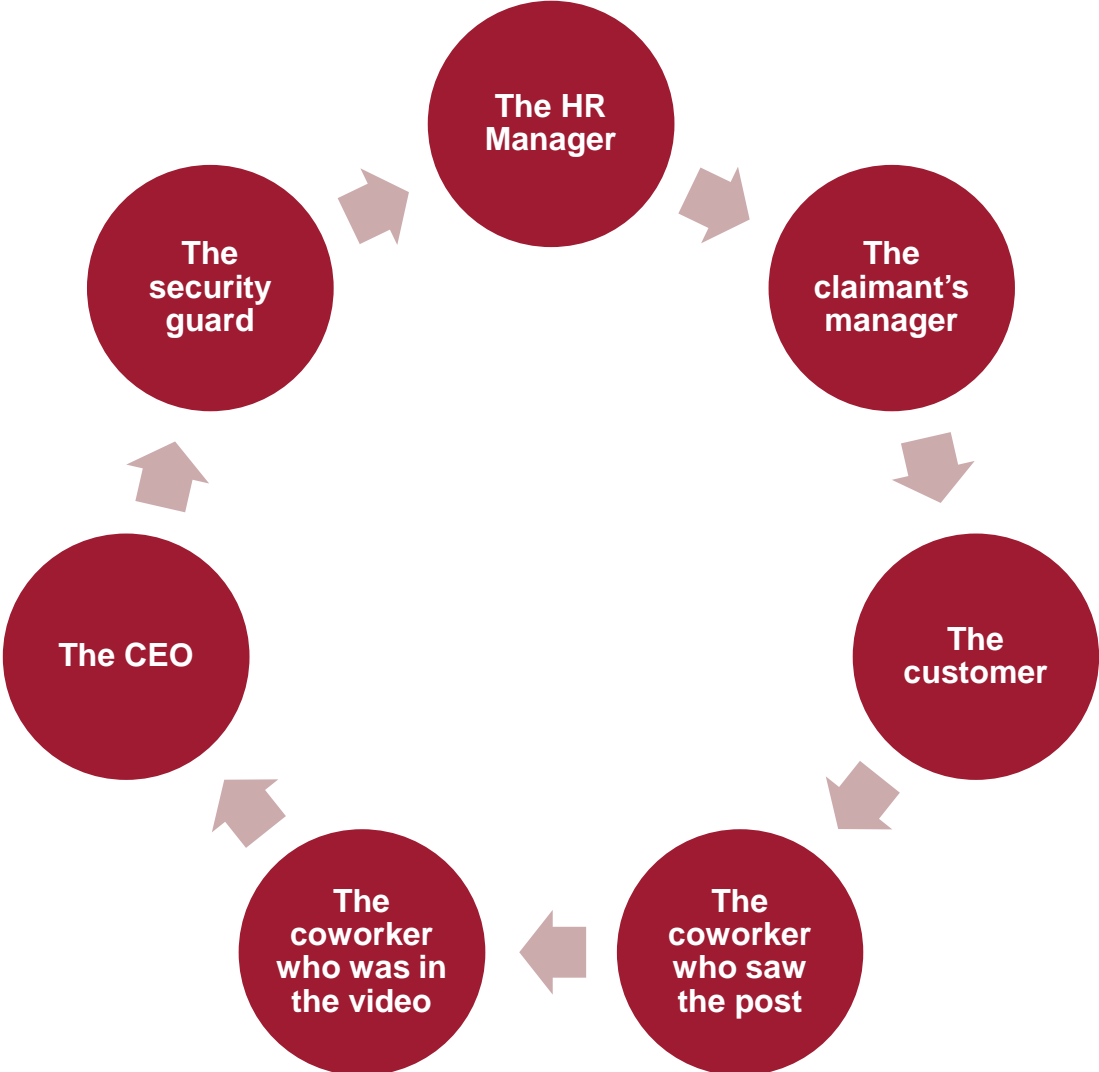
- › The claimant was discharged for posting a video to Facebook with negative comments directed toward a customer.
- › The video showed a situation between a customer and a coworker which happened in the presence of a manager and a security guard.
- › Another coworker of the claimant saw the post and comments then reported it to the claimant's manager.
- › The claimant admitted to her manager that she posted the video and made the comments.
- › The claimant deleted the video at the employer's request.
- › The employer has a social media policy for which the claimant signed an acknowledgement.

# Poll Question #1

Who should the employer call as witnesses?



# The Potential Players



# Poll Question #2

**What physical evidence, if any, should the employer provide at the hearing?**





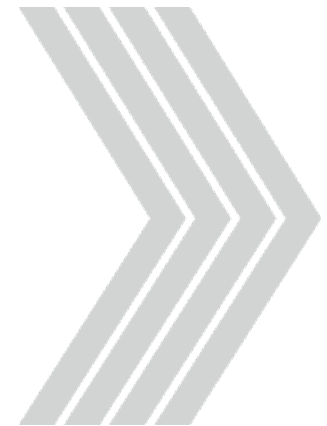
# Potential Exhibits

- › The employee handbook
- › The Social Media policy that the claimant violated
- › The claimant's signed acknowledgement of policy
- › The Facebook post with the comments
- › The video
- › Prior warnings
- › Conduct warnings
- › The investigation notes

# THE HEARING

Claimant: Mimi Bobeck

Employer: Holmes Department Store



# The Players

## Claimant

- **Mimi Bobeck**
- Karen Perce, Sr. Manager, Disability and Workers' Compensation, Procter & Gamble

## Union Representative

- **Kelly Newmark**
- Billy Rudnick, Manager Gov't Relations, Equifax

## Employer Witness

- **Kate O'Brien**
- Jennifer Wells, Unemployment Manager, Staffmark

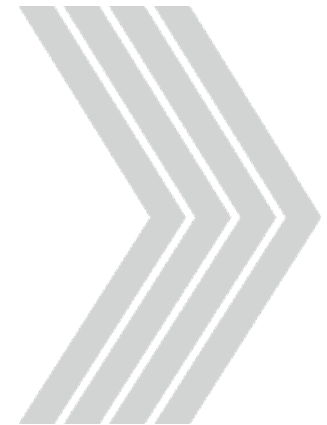
## Employer's Representative

- **Lewis Kinski**
- Joe Fogarty, Manager Gov't Relations, Equifax

## Review Examiner

- **John Cronin**
- Review Examiner, MA DUA

# EMPLOYER'S EVIDENCE



# Exhibit #1

## Code of Conduct

### Social Media Policy

1. Employees are prohibited from posting material on the internet that could be viewed as malicious, obscene, threatening or intimidating, or that disparage customers, employees, or suppliers, or that might be viewed as harassment or bullying. This may include material that would intentionally harm someone's reputation or be viewed to create a hostile work environment on the basis of race, sex, disability, national origin, or other status that is protected by law.

# Exhibit #2

## Holmes Department Store


### Acknowledgment of Receipt of Employee Handbook

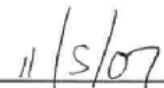
I certify that I have received, read, and understood the policies contained in the Employee Handbook, including the following:

- Absenteeism and Punctuality
- Code of Conduct
- Paid Time Off
- Anti-Violence
- Computer Systems
- Employee Discount Policy
- Harassment and Discrimination
- Substance Abuse
- Theft and Loss Prevention
- Progressive Disciplinary Policy




I understand that if I have any questions about the policies and procedures it contains, I may contact the Human Resources department for clarification at any time.

I agree to comply with the Handbook's policies and procedures, and I understand that any violations of them could result in disciplinary action up to and including termination of employment.

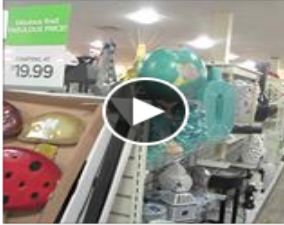
  
\_\_\_\_\_  
Employee's Name

  
\_\_\_\_\_  
Date of Receipt




# Exhibit #3


 **Mimi Bobeck** January 20 · YouTube ·  


Check out this customer! What an idiot!





**CRAZY SHOPPING ADVENTURES!**  
MY SOCIAL MEDIA: Instagram- @Yerrawesome  
Twitter- @Yerrawesome Facebook- Yerrawesome  
CHECK OUT RSP NUTRITION: <http://www.rspnutri...>  
YOUTUBE.COM


 Like  Comment  Share

 **Gini Magnuson** Ha, that's funny!  
Like · Reply · January 20 at 11:07am


 **Mimi Bobeck** We have special customers downtown, don't we???


Like · Reply · January 20 at 11:30am



 


 **Heather Oberlin Holland** HA! That's hysterical! I never knew working in retail was so fun!

Like · Reply · January 20 at 11:08am


 **Mimi Bobeck** I wish you were there! Poor Nick had her talking for a long time!

Like · Reply ·  1 · January 20 at 11:31am



 


 **Andrea Olson** That is so funny!

Like · Reply · January 20 at 11:16am


 **Mimi Bobeck** You should have seen this lady! She totally didn't look like someone who shopped at our store! It was embarrassing.


Like · Reply · March 8 at 11:12am · Edited



 

 **Ann Gentle** OMG, hilarzzz!

Like · Reply · January 20 at 11:25am

 **Mimi Bobeck** Oh yeah, she was really hitting on him. I wish it was all on video. It was a good 30-45 minutes.

Like · Reply ·  1 · January 20 at 11:34am · Edited

# Poll Question #3

**What will be the impact, if any, of the employer's failure to present the actual video as evidence?**





# Poll Question #4

**Do you think the employer representative's last question was appropriate?**

(“Did he say if he felt threatened by her?”)



# Poll Question #5

**The incident that led to the claimant's warning is different from the final incident.**

**What impact, if any, will this have on the outcome of the hearing?**

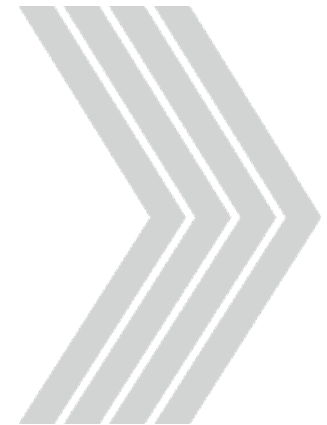


# Poll Question #6

**Do you believe the employer has presented enough evidence to win?**



# CLAIMANT'S EVIDENCE



# Poll Question #7

**The Facebook post comments were not made available to the general public.**

**What impact, if any, will this have on the outcome of this hearing?**



# Poll Question #8

**The claimant cited safety concerns as her reason for posting the video.**

**What impact, if any, does the claimant's failure to formally report this as a potential safety issue have on her case?**



# Poll Question #9

**Some states require that the claimant must intentionally disregard or violate the policy.**

**Hypothetically speaking, do you think the evidence supports such a finding?**



# Poll Question #10

## Who won?





# Key Take-Aways



Careful consideration of witnesses and evidence prior to hearing can make or break your case



Actions off-the-job can result in a finding of misconduct



Relevant prior warnings are key to proving misconduct

- Isolated incidents can result in disqualification



Hearsay is admissible in unemployment hearings

- It is not the most reliable evidence and can be overcome by a claimant's denial of the facts under oath.

Thank You for Participating!

**Questions / Comments**