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**ALLEGHENY COUNTY LABOR COUNCIL
REPORT OF LEGAL COUNSEL
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***EMPLOYEE ACCEPTING EARLY RETIREMENT PACKAGE FOUND ELIGIBLE FOR
UNEMPLOYMENT COMPENSATION BENEFITS***

The Pennsylvania Supreme Court, in Diehl v. UCBR (ESAB Group, Inc., No. 51 MAP 2011), issued on December 28, 2012, determined that an employee who accepted an early retirement package, was eligible for unemployment benefits under the Voluntary Layoff Option in Section 402(b) of the Unemployment Compensation Law, Title 43 P.S. § 802(b). In doing so, the Supreme Court overruled a long line of Commonwealth Court cases denying employees who voluntarily accept an early retirement package the right to qualify for u/c benefits.

The case arose in 2008, when the employer notified the Union and the employees of an intention to permanently lay off twenty junior employees. The employer offered a voluntary early retirement package, and the Claimant (a senior employee who would not have been affected by the reduction-in-force) accepted the early retirement package. The Claimant did so on the assumption that he would qualify for u/c benefits, and a junior employee who had been targeted for layoff was able to remain employed.

The UCBR and the Commonwealth Court found the employee ineligible because the employee could not prove that his own job was threatened by the layoff. The Commonwealth Court relied on its earlier decisions to say that the Voluntary Layoff Option that applies to temporary layoffs did not apply to permanent layoffs such as an early retirement package.

Justice Max Baer, writing for a majority of the Court, found that the line of Commonwealth Court cases lacked any analysis that would justify treating permanent layoffs in a manner different from temporary layoffs. The Court also rejected the notion that the Claimant had to show that his own job was at risk. The Court relied on the plain language of Section 402(b) and the presumption in favor of eligibility to conclude that a permanent layoff would be treated the same as a temporary layoff. Thus, so long as the Claimant was otherwise eligible (meaning that he had enough earnings and that he was still actively seeking other work), the Court ruled that the Claimant had the right to accept the early retirement package and still remain eligible for u/c benefits.

It is important to remember that an employee in this situation must still be 'otherwise eligible', meaning that the employee must have sufficient earnings and must be available and seeking other work. However, this decision brings voluntary early retirement packages in line with other voluntary layoffs.

**RESPECTFULLY SUBMITTED,
JOSEPH S. PASS, ESQUIRE**