

Membership Matters

Quarterly News from The 501 Alliance

September 2009

What is Misconduct?

As an employer, you may have valid business reasons to discharge an employee. However, for unemployment insurance (UI) purposes, those reasons may not result in a finding of benefit ineligibility due to misconduct. In order for a state UI agency to disqualify a person from receiving benefits, there must be clear evidence of misconduct and the burden of proof is largely on the employer.

Each state's UI laws contain disqualification provisions for employees who are discharged for misconduct. In general terms, misconduct is defined as deliberate and/or willful acts by the employee that violate local, state or federal laws, or acts that could cause injury to another person, or violate a company's policy after prior warnings that place the employee's job in jeopardy. In most states, actions or behavior must be willful or deliberate and be in connection with the work, in order for a misconduct UI decision to be rendered.

Poor work performance is generally not considered misconduct. If an employee has performed assigned work to the best of his/her ability but simply cannot meet the employer's standards or needs, there can be no finding of willful and substantial disregard of the employer's interests. A discharge for mere inability will not ordinarily result in a disqualifying UI claim decision; even if the individual was warned that continued substandard performance might result in discharge. Similarly, single isolated incidents of poor judgment, by themselves, are generally not considered misconduct.

State UI agencies must make their decision based on the facts of the discharge and the misconduct statutes, and not necessarily an employer's company policy. The employer bears the burden of proof that misconduct did occur and should be able to provide the following with regard to a UI claim:

1. A detailed description of the final incident; dates of employment; name and title of the person who terminated the employee; a copy of the company policy and the employee's signed acknowledgement of the policy/handbook.
2. Copies of prior warnings detailing previous similar incidents. Each warning must give the date the incident occurred, details of what happened and should indicate further incidents will result in further disciplinary actions, up to and including termination.
3. Documentation must show the employee previously was able to meet company standards and is no longer meeting those standards.

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4. Specific information about behaviors or actions such as excessive personal phone calls or e-mails, excessive or long breaks or lunches, carousing, unauthorized computer usage (including internet) or demonstrations of gross negligence, gross carelessness or gross indifference equivalent to a disregard of the employer's interests.

General statements such as: "failed to meet sales goals," "terminated for cause," "failed to meet production standards," "misconduct, not meeting expectations" will likely not lead to a disqualifying claim decision, since these are simply unsubstantiated conclusions and not evidence of misconduct. Also, failure to provide details may result in the claimant being eligible for unemployment and your account being charged for these benefits.

Employers can improve their ability to prevail in misconduct UI claims by adhering to policies, advising employees of infractions, taking appropriate corrective steps and keeping detailed records.

Disclaimer: The information contained in the examples given is general in nature and is not intended as legal advice.

Unemployment Cost Control Training Available

Has your agency experienced turnover in management? Do you know how to properly document verbal and written warnings? Do your supervisors and managers need a refresher course on the unemployment process? We offer a free workshop that will help your organization better control your unemployment costs.

The workshop lasts about an hour depending on the number of questions and the size of the group. We also come to your facility, so your organization doesn't incur any travel or other costs normally associated with training. The topics reviewed include the unemployment compensation process, separation issues and concerns, verbal and written warnings and employment guidelines from the state.

If you would like to schedule a workshop, all of your supervisors and managers should attend. These individuals are your organization's first-line defense in controlling your unemployment costs. We believe it's important to show the relationship between disciplinary actions and your agency's bottom line. Contact the Administrator, Mike Pennanen, at 800-968-9675, ext. 2950 to schedule a workshop at your organization.

Do you have a topic or suggestion for the next newsletter? Please e-mail your ideas to mpennanen@talx.com