

WILLFUL MISCONDUCT

Anyone whose unemployment is due to discharge for willful misconduct connected with the work is ineligible for compensation. This does not mean that everyone who is discharged as unsatisfactory will be denied benefits. Employees who are discharged for incompetence, error, or other reasons, may be eligible for unemployment benefits.

THE BURDEN FOR PROVING WILLFUL MISCONDUCT IS UPON THE EMPLOYER.

1. When an employee is discharged for violating a rule, the employer must prove it exists and was violated and reasonable. Where, however, the evidence indicates that the employer's rule or agreement was unreasonable or that the employee's violation was justified, a claimant may be qualified for benefits. The employer must also show that the employee was discharged for violating the rule.
2. The employer must prove that the employee was aware of or should have been aware of the rule prior to the incident.
3. The employer must establish that it followed its own policies in disciplining and discharging the employee.

Willful misconduct may consist of a single instance of major misconduct or a series of instances of less serious misconduct, which individually might not be cause for discharge, but which, taken collectively, show a pattern of disregard for the employer's best interests. Discussed below are examples of cases which have been used to justify discharges for willful misconduct. Court decisions dealing with specific instances relating to these examples periodically change the courts' definitions and the interpretations of what constitutes "willful misconduct."

If an employer wishes to avoid being charged for UC benefits paid to an employee who was discharged for misconduct, the misconduct should be documented.

Misconduct may consist of an offense which is serious enough to be disqualifying in itself, such as stealing from the employer, or assault on a co-worker or supervisor. Misconduct may also consist of an offense which is disqualifying only because it violates a regulation of the employer, such as smoking on the job, failure to observe safety rules, etc. In the second case, it will generally be asked in a hearing if the offense actually violated an employer's rule, if the rule was generally enforced, and if the employee was aware of the rule.

Employers are advised to prepare a list of the principal company regulations and to see that they are made available to and reviewed with their employees when hired.

Absence and Tardiness

Chronic absence or tardiness without a good reason constitutes “willful disregard of the standards of behavior which an employer has the right to expect.”

A claimant whose absence is with good cause, such as sickness, but who violates an employer’s rule for reporting the absence, may be ruled ineligible for benefits. A claimant who is discharged for repeated absenteeism may be awarded benefits if it is shown that the absences were caused by illness and the claimant had properly reported off to the employer in each instance.

ABSENTEEISM—TARDINESS

- Where a claimant is discharged for absenteeism or tardiness, the deciding factor for eligibility is the claimant’s reason for the LAST absence or tardiness.
 - The claimant must have been previously warned about the absenteeism or tardiness.
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Point system—Where an employer has a policy of assigning points for each absence or tardiness and the claimant is separated upon reaching a certain point total in a specified period of time, the Courts have ruled that if any of the absences or tardiness are for good cause, benefits cannot be denied.

Application for Work

Making false statements on an application for employment may constitute willful misconduct.

The UC authorities are required, however, to decide whether the false statement is sufficiently material to meet the definition of willful misconduct.

Attitude Toward Employer

In any employment relationship there are certain standards of behavior which the employer has the right to expect of his employees, even though they may not be expressly set forth in the written or oral rules.

Abusive language, insubordination, or other improper conduct toward one’s employer or his fellow employees may constitute willful misconduct. Employers have similar responsibilities.

Conditions of Employment

An employee is required to observe conditions of employment, provided they are reasonable. When employees fail to satisfy reasonable conditions of employment, their discharges are sometimes held to be willful misconduct for reasons which at first glance might seem startling. For example, a bookkeeper who was hired with the understanding he or she would apply for a notary public commission, was fired after two years because the bookkeeper had not applied for the commission, although repeatedly requested to do so. The failure to apply was held to be willful misconduct.

Customer Relations

An employer’s customers are as important to the business as goods or property, and an employee has a positive duty to protect the employer’s customer relations. To be considered willful misconduct, the offense to the customer must be deliberate and substantial. To justify a misconduct charge, there must be an actual offense charged. A customer’s mere distaste for, or dislike of, an employee is not sufficient to sustain a charge of misconduct.

Crime

An employee may be found to be guilty of willful misconduct if he or she is discharged for commission of a crime which evidences off-duty conduct inconsistent with reasonable expectations of the employer and which impact upon the employee's ability to perform the job.

In addition to these types of crimes, claimants who have committed lesser offenses which tend to bring discredit on their employers, or which make them useless in their jobs, may be denied benefits.

However, a conviction normally must directly affect the capacity to perform his or her assigned duties.

The mere arrest of an employee who is charged with committing a crime, in the absence of a conviction, is not enough to prove willful misconduct where the employee denies the allegation. Proof of more than an arrest is necessary to have benefits denied.

An employee who is incarcerated following a conviction is ineligible for benefits while incarcerated.

Debt

An employee who is discharged because of failure to pay debts (child support, alimony, taxes, etc.) will not necessarily, on that account, be held guilty of willful misconduct.

Dishonesty

Dishonesty to one's employer may constitute willful misconduct, whether the instance of dishonesty is prosecuted as a crime or not. Employees have been held ineligible for benefits when discharged for failure to record a cash sale, or for falsifying work records to obtain greater compensation, or for having a time card punched by another.

Disloyalty

An employee may be found guilty of willful misconduct for disloyalty to his or her employer. Examples include assisting a competitor or competing with the employer.

Driver's License

A person whose employment depends upon his ability to drive a motor vehicle has a responsibility to maintain his or her driving privileges. Those discharged for loss of license may be ruled ineligible for benefits. The loss of benefits may be imposed regardless of whether the license loss occurred as a result of operating the employer's vehicle or driving while off the job.

Fellow Employees

An employee whose attitude or conduct toward his or her fellow employees disrupts work or causes dissension may be guilty of willful misconduct.

Incompetence

Incompetence may be good grounds for discharge, but it does not serve to disqualify a claimant for benefits. This point is sometimes difficult for an employer to understand, particularly when the incompetence is so outrageous as to result in the loss of business or damage to goods.

A claimant's plea that a discharge was for incompetence may be rejected when by training, experience and past performance, the claimant has demonstrated qualifications for a job and familiarity with it. In addition, mistakes become willful misconduct when an employee repeats an avoidable mistake, after warnings, to the point where the mistakes demonstrate a willful disregard for the employer's interest.

In both cases, an employee could be denied benefits on the grounds of willful misconduct, not for incompetence.

Drug and Alcohol Testing

A claimant is ineligible for UC benefits where his/her unemployment is due to discharge or temporary suspension from work due to his/her failure to submit to and/or pass a drug test conducted pursuant to an employer's established substance abuse policy, provided that the drug test is not requested or implemented in violation of the law or of a collective bargaining agreement. An alcohol test is considered to be a drug test.

The employer bears the burden of proving that the claimant either failed to submit to or failed to pass a drug/alcohol test; and, that there was a substance abuse policy in place.

Although the burden is on the employer in a discharge situation, if the claimant indicates that the employer has violated a collective bargaining agreement by requesting or administering the test, the burden of proof will shift to the claimant. The claimant will have to show how the employer's actions violated a collective bargaining agreement. The burden of proof will also shift to the claimant if he/she indicates that there was a violation of the law with regard to the request for the test or implementation of the test.

Neglect of Duty

Negligence in the performance of one's duties, if it is repeated in the face of warnings, or if it seriously conflicts with the employer's interest, may constitute willful misconduct.

Suspension

When an employee is temporarily suspended for willful misconduct, he or she may be ineligible for benefits during the suspension. If the employer later changes the suspension to discharge, the employee may still be denied benefits. Or, if an employee is discharged for willful misconduct, and the discharge is later changed to suspension to permit the employee to be hired again, the employee may be ineligible during the period of suspension.

SUSPENSION FROM WORK

A suspension is treated as a discharge for the period of the suspension. If the claimant returns to work following the suspension, and is subsequently separated under non-disqualifying circumstances, the claimant does not have to purge any disqualification resulting from the suspension.

Union Relations

The Board of Review may not delegate its responsibility for deciding appeals to a grievance committee or to an arbitrator, but must establish its own record and make its own determination. A union contract may not be used to deny rights granted by the law. However, Board decisions may note that a discharged claimant has failed to file a grievance, or that a given action of a discharged claimant was in violation of a contract provision.