“Misconduct” Under Washington Unemployment Law

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One common misconception is that you cannot be fired from your job unless you do something wrong and give your employer good cause.

This may be the case if you have a contract with a work guarantee, are a union member protected by a collective bargaining agreement (CBO), or are a government employee protected by civil service rules. However, it is usually not the case if you are a regular at-will employee like many people in Washington.

An at-will employee can be fired for any reason or no reason at any time at the sole discretion of the employer.[1] The reason for termination remains critical, however, to whether the fired worker qualifies for state unemployment benefits. Someone who is laid off for lack of work or fired for no good reason may be entitled to state unemployment benefits but someone who is fired for "misconduct," is not. This is because the state unemployment system provides a limited safety net to eligible persons who lose their jobs through no choice or fault of their own.

The Definition of "Misconduct"

The purpose of the state unemployment system is to provide a limited safety net to those eligible persons who lose their jobs through no fault of their own as opposed to persons who are fired for their own misconduct. RCW 50.04.294 defines "misconduct" in the context of a state unemployment claim to include:

> (a) Willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee;
>
> (b) Deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee;
>
> (c) Carelessness or negligence that causes or would likely cause serious bodily harm to the employer or a fellow employee; or
>
> (d) Carelessness or negligence of such degree or recurrence to show an intentional or substantial disregard of the employer's interest.

[1] RCW 49.60.180(2) makes it an unfair practice for an employer "to discharge or bar any person from employment because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person."

Some examples include:

> (a) Insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions or instructions of the employer;
>
> (b) Repeated inexcusable tardiness following warnings by the employer;
>
> (c) Dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;
>
> (d) Repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;
>
> (e) Deliberate acts that are illegal, provoke violence or violation of laws, or violate the collective bargaining agreement. However, an employee who engages in lawful union activity may not be disqualified due to misconduct;
>
> (f) Violation of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or
>
> (g) Violations of law by the claimant while acting within the scope of employment that substantially affect the claimant's job performance or that substantially harm the employer's ability to do business.

Making isolated and honest mistakes or failing to meet efficiency standards may be grounds for dismissal of an at-will employee but do not necessarily constitute "misconduct" sufficient to bar unemployment benefits under Washington law. RCW 50.04.294 states that

***"misconduct" does not include*:**

> "inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity, inadvertence or ordinary negligence in isolated instances, or good faith errors in judgment or discretion."

Reason for Termination

Some employers give their employees "exit interviews" and explain their decision to terminate face-to-face and in writing in every case. But, many do not. If there is any question or doubt in the employee's mind, the employer can be asked to provide a signed written statement explaining the reasons for discharge under Washington Administrative Code (WAC) 296-126-050. The law requires the employer to respond within ten days.

Voluntary Quits

The general rule is that, if you voluntarily quit your job (as opposed to being involuntarily separated), then you are disqualified from receiving unemployment benefits. The exceptions to the rule set forth in RCW 50.20.050 include:

- the separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence
- the individual's usual compensation or hours were reduced by 25% or more
- the individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market
- the individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time
- the individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time
- the individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs.

Administrative Appeals

If your application for unemployment benefits is denied by the state Employment Security Department (ESD), then you must file and serve a written Notice of Appeal within 30 days. Once the appeal is filed, the state appoints an administrative law judge (ALJ) employed by the Office of Administrative Hearings (OAH). The ALJ usually schedules the hearing to take place by telephone in less than 30 days. The key issues often include the claimant's pre-separation work hours and compensation, the reason for separation (quit, layoff or termination), and whether the claimant is actively searching for work in accordance with the ESD's published rules and procedures.[2]

[2] Among other things, the ESD requires claimants to keep a log book tracking contacts with prospective employers. The state wants to ensure that claimants make reasonable ongoing effort to secure employment while receiving benefits.