Unemployment Insurance: Eligibility After Being Fired from a Job YOUR LEGAL RIGHTS

1.

   ### Am I eligible for unemployment insurance even if I have been fired from a job?

   Under California law, an employee who is discharged ("fired" or "terminated") from a job is eligible to receive unemployment insurance (UI) benefits unless the former employer shows that the employee was fired for "misconduct connected with the work." "Misconduct" has a very specific legal definition. Although employers often say they fired a person for "misconduct," simply calling it "misconduct" is not enough to disqualify the worker from receiving UI benefits. The former employer has to show that the worker knowingly broke an important rule or failed to perform an important job duty, in a way that could be harmful to the business.

2.

   ### What if I wasn't given a reason for being fired?

   Whether or not you were given a reason for being fired, your eligibility for benefits will be decided based on the "triggering incident" for your termination, meaning the last incident involving you and your former employer before the former employer made the decision to fire you.

   In many cases, the reason for losing a job is unknown or unclear to the employee. An employer may deliver the bad news about being fired in a way that leads the employee to believe he or she has been laid off for lack of work. Or, an employer may use a recent minor violation of duty by an employee as an excuse to fire him or her for some other reason, including a more important violation of duty that occurred in the distant past. Bottom line: Your former employer's actual reason for firing you, not just its stated reason, governs your eligibility for UI benefits.

3.

   ### What is (and what is not) misconduct?

   To prove misconduct, an employer must show that an employee:

   - broke a work-related rule or failed to perform a job duty;
   - the rule or duty was important;
   - the employee knowingly broke the rule or intentionally failed to perform the duty; and,
   - the employer's business could be harmed by this kind of conduct.

   An employer must show that *all* of these elements were present in the "triggering incident" to disqualify a worker from receiving unemployment benefits. If the triggering incident that caused you to be fired did not involve an important rule or duty, then no misconduct has occurred. If your actions were accidental rather than knowing or intentional, then no misconduct has occurred.

   Some common reasons for termination that are usually considered misconduct include:

   - repeated tardiness or absences from work in violation of the employer's policy;
   - mishandling of cash, including intentional and certain unintentional acts;
   - violations of known employer rules, including telephone use, customer service, and behavior towards co-workers;
   - deliberate acts of insubordination or a refusal to obey the instructions of the employer without good cause for the refusal.

   Many reasons for termination, however, do not meet the legal standard for denial of benefits, even though an employer may report to the Employment Development Department (EDD) that the termination was based on misconduct. Common situations in which an employee has been fired and the employer tries unsuccessfully to disqualify the worker from benefits for misconduct involve:

   - poor job performance, or an unintentional failure to meet the employer's standards;

- personality conflicts.

4.

Defenses to a misconduct charge

Under certain circumstances, a person claiming unemployment insurance may not be disqualified even though his or her termination from the job has some of the elements of misconduct. To prevent disqualification, a claimant must use one of four established defenses to misconduct: (1) the incompetence defense; (2) the single, isolated incident defense; (3) the employer condonation defense; or, (4) the causal connection defense. These defenses are discussed briefly below.

Incompetence Defense

Although an employer may have the right to fire a worker for poor work performance, inefficiency in performing work or failure to meet the employer's standards is not considered misconduct because it is generally not considered to be intentional. Therefore, you may avoid a misconduct disqualification in such a case by arguing that what your former employer perceived as misconduct was not intentional but, rather, a result of incompetence. The incompetence defense, however, will not prevent a misconduct disqualification if you were terminated because you were regularly sloppy and negligent or admittedly stopped caring about the quality of your work.

Single, Isolated Instance Defense

This defense can be used when the triggering incident for the termination was a first-time offense, involving conduct that was unusual, uncontrollable or motivated by a momentary lapse of reason. You may avoid a misconduct disqualification in such a case by arguing that you never made such a mistake or error in judgment in the past and did not understand the consequences. The single, isolated instance defense will not, however, be helpful if you were previously warned by your former employer for similar conduct. (See Section 6 below, Example A.)

Employer Condonation Defense

If an employer terminates an employee for an obvious act of work-connected misconduct immediately or shortly after the misconduct occurred, the employer has a strong argument for a disqualification. If, however, the employer waits a long time before deciding to terminate the employee, the employer may lose the opportunity to challenge an unemployment insurance claim based on misconduct. You may avoid a misconduct disqualification in such a case by arguing that your former employer knew of the actions and did nothing to indicate that such actions are considered misconduct worthy of termination. Your position is that your former employer condoned the actions by ignoring or accepting your behavior and by not informing you that continuing the conduct may result in termination. The employer condonation defense will help only in situations where it is clear that the employer knew of the conduct but remained silent about how wrong it was for an unreasonable period of time. (See Section 6, Example B.)

Causal Connection Defense

This defense emphasizes the importance of the "triggering incident" for the termination. The employer may use incidents of misconduct from the distant past as a reason to terminate an employee. To disqualify a person from receiving unemployment benefits, however, the employer would have to show that the triggering incident also meets the legal standard for misconduct. You may avoid disqualification in such a case by arguing that there was no misconduct involved in the triggering incident and, therefore, no connection between your earlier misconduct and the loss of the job. (See Section 6 below, Example B.)

5.

What if my employer says I was fired for misconduct when I think I quit or was laid-off?

When applying for unemployment insurance, you will be asked to describe how you left your last employment. Your last employer will also be contacted and asked for his or her description of how the job ended. This is a subject on which claimants and employers often disagree. How the job ended, however, is extremely important in determining eligibility for employment insurance.

When claiming unemployment insurance, there are only three ways to describe how the last job ended: "discharge," "quit," or "lay-off." These terms have specific meanings that identify whether it was the claimant or the employer who caused the employment to end:

- Discharge ("Fired" or "Terminated") A "discharge" is any situation in which the employer refused to allow a worker to continue working while there was still work available. A worker who has been discharged will be eligible for unemployment insurance unless the employer can show the discharge was for misconduct.
- Quit ("Resignation") A "quit" is any situation in which a worker refused to continue working although there was still work to be done. A worker who quit may be eligible for unemployment insurance only if he or she can show that the quit was necessary and for "good cause" according to the law. See our Fact Sheet Unemployment Insurance: Eligibility after Quitting a Job for more information.

- Lay-Off (“Lack of Work”) A “lay-off” is any situation in which a worker is unable to continue working because the position or work has been eliminated and no further work has been offered by the employer. A worker who has been laid-off automatically will be considered eligible for unemployment insurance unless, or until, the employer protests.

Sometimes, what seems to be a quit is really a “discharge,” and what seems to be a discharge is really a “quit.” For example, if you are told you will be fired or laid-off—but you leave the job before the date the job is supposed to end—you may be disqualified from unemployment insurance because you “quit” your job. On the other hand, if you tell your employer you intend to quit your job on a certain date—but your employer makes you leave the job before that date *and does not pay you for all the days you planned to work*—you may still be eligible for unemployment insurance because you will be considered to have been “discharged.”

Using the wrong term when filing an unemployment claim to describe how the last job ended can result in serious consequences. Saying you were “laid-off” if you actually quit or were discharged can be considered a “false statement” and may result in a denial of benefits, or a determination that benefits you already received must be returned. The EDD may also assess further penalties if it believes a false statement was made “knowingly.” In most cases, these penalties increase the amount of repayment of benefits by 30% and result in 2 to 15 weeks of disqualification for benefits. If the EDD finds that the false statements were made with the “intent to defraud,” the penalty is disqualification from receiving benefits for 3 years, and may result in criminal prosecution.

6.

Example of cases involving termination

Below are three examples of cases that illustrate (A) a discharge for reasons that lead to a disqualification from unemployment insurance based on misconduct; (B) a discharge for reasons that do not lead to a disqualification from unemployment based on misconduct; and (C) the importance of identifying the moving party in determining eligibility for unemployment insurance:

Example A: Discharge for “misconduct”

Keith worked for a moving and freight company that used a point system to track employee tardiness and absence. Any time an employee was late or absent, the employee would be given points. Once an employee reached 8 points, the employee could be terminated. Keith had collected 7 points over the past year. He collected most of these points because of absence related to occasional illness or lateness because of problems with childcare arrangements. The “triggering incident” happened when Keith showed up at work 1.5 hours late because he mistakenly thought his start time was 10 am on a day that it was actually 8:30 am. Typically, in the afternoon, the employer would post the schedule for the following day on a bulletin board near the dispatcher’s office. If the schedule was not posted by the time a worker left work, the worker was expected to call the dispatcher later and ask. The schedule had not been posted on the evening before the triggering incident, but Keith failed to call the dispatcher to confirm his start time.

Because he had been warned by the employer about his tardiness and absence record and he knowingly failed to call the dispatcher to confirm his start time and avoid another incident of tardiness or absence, Keith was found to have been discharged for “misconduct.” In this case, the “single, isolated instance” defense did not apply because of prior warnings. Keith is not eligible for UI benefits.

Example B: Discharge for reasons other than “misconduct”

Lucy worked as a nanny for a couple, caring for their infant. Lucy had injured her back at a previous job, and needed surgery. The employer allowed Lucy to take time off for the surgery and to recover. During the middle of the time off, the employer contacted Lucy and said that they no longer needed her services. The employer did not give Lucy any specific reasons, except to say that the child was currently being cared for by a family member and that seemed to be working out better. However, the employer challenged Lucy’s ability to receive unemployment benefits, saying that they had fired her for intentionally disobeying certain instructions concerning the care of the infant and the cleanliness of the infant’s environment.

Because the employer did not show a connection between the timing of Lucy’s termination and the specific, intentional misdeeds they say she committed, Lucy was found to have been discharged for reasons other than “misconduct.” In this case, the “employer condonation” defense, the “causal connection” defense and the “incompetence” defense all applied. Lucy is eligible for UI benefits.

Example C: Identifying the moving party

Kim worked for a computer software design firm as a graphics engineer. She had reached a point in the company where she felt as though there was no further room for advancement. She decided to resign and give her employer two-week notice of her plan to leave. Although the employer understood her desire to move forward with her career, the employer informed Kim that it would be better and safer for the company for her resignation to take effect immediately. The employer paid Kim the wages she was owed up through that day. Security escorted Kim to her desk and watched her pack her things to leave.

Because Kim was ready, willing and able to perform work for the company for another 2 weeks but the employer refused to allow her to do that work, the employer was the moving party in the separation. Since the employer was the moving party and the employer did not accuse Kim of any acts of misconduct, Kim was found to be eligible for UI benefits. (However, if Kim had been paid by the employer through the

end of her two-week notice period, she would have been considered the moving party and the case would be considered a voluntary quit.)

For further information about your employment rights, contact the Workers' Rights Clinic.