

## EMPLOYMENT SECURITY COMMISSION CLAIMS

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In the current economic climate many employees who have been terminated due to performance, conduct, or reduction in force will be filing claims with the North Carolina Employment Security Commission for benefits. It is important for employers to know which of these claims may be successfully defended.

Generally speaking, employees are disqualified for benefits if they quit employment without good cause attributable to their employer. (This is a two-year disqualification.) Good cause attributable to the employer would include such matters as substantial pay cuts, a substantial reduction in work hours or a forced resignation. What might not be readily known to employers is that employees who leave work to accompany their spouse to a new location may not be disqualified. Employees who leave work because of domestic violence, stalking or a sexual offense committed against them or close family members are likewise not disqualified.

Employees are disqualified for benefits if they are terminated for misconduct including, but not necessarily limited to, being impaired by alcohol or drugs at work or theft of company property. Any willful or wanton disregard of an employer's legitimate interests may be considered misconduct. What constitutes misconduct is ultimately a factual determination made by the Employment Security Commission in a contested case. Upon a finding of misconduct an individual will be considered disqualified for a period of two (2) years.

Employees who are discharged for acts which are not serious enough to constitute misconduct but which are nevertheless detrimental to the interests of the employer may have their benefits reduced by between four (4) and thirteen (13) weeks. Whether to reduce benefits for "substantial fault" is often a difficult call for the Employment Security Commission to make at a hearing and will require solid evidence presented by the employer to compel such a finding. It is therefore important for all employers to maintain notes and warnings of unacceptable behavior on the part of their employees. It should be noted that minor violations of work rules in the absence of previous warnings, inadvertent mistakes, and simple performance issues will not provide the basis of a finding of substantial fault. Employers should be aware that when their employee is discharged on the basis of substantial fault the reduced benefits are not charged to the employer's account.

If the initial adjudication of benefits is appealed and a hearing is set there are several matters for employers to consider. The first thing to remember is that the intent of the law is to provide benefits to those workers who are unemployed due to no fault of their own. Therefore, employers have the burden of proving grounds for discharge due to misconduct. These grounds will normally have to be proved through non-hearsay evidence which means that the appropriate witnesses and documents will have to be available for the hearing. It is also important to keep the focus of the hearing on the particular issues that have been appealed. The hearing officers are not interested in hearing irrelevant testimony regardless of the importance assigned to it by the parties. Finally, if the adjudication of benefits is appealed you must be aware of and observe the time limitations set out in the notices from the Employment Security Commission or you risk the loss of your right to the appeal.