

## Defend Unemployment Claims With Evidence of Misconduct

At some point, every employer becomes familiar with the hearing process for unemployment claims. For many, the first lesson is how difficult it can be to prove any of the few defenses to these claims, as benefits are generally awarded to the unemployed in all but the most extreme cases.

Starting November 1, 2011, employers will have an easier path to defeating unemployment claims by former employees who were fired for wrongdoing. While the general rule has always been that blatant misconduct means no unemployment benefits, the North Carolina General Assembly has added detail and definition to the idea of misconduct. Under the new law, a former employee will be disqualified for benefits for:

- violating the employer's written alcohol or illegal drug policy;
- reporting to work significantly impaired by alcohol or illegal drugs;
- consuming alcohol or illegal drugs on employer's premises;
- being convicted for selling controlled substances;
- being terminated or suspended from employment after arrest or conviction for an offense involving violence, sex crimes, or illegal drugs;
- engaging in workplace violence;
- creating a hostile work environment (by inappropriate comments or behavior) for those of a particular race, ethnicity, religion, disability, age, sex, or color;
- theft on the job;
- forging or falsifying an employment application or any other document or data related to employment;
- violating an employer's written absenteeism policy;
- refusing to perform reasonably assigned work tasks; and
- failing to adequately perform job duties, if documented by three or more written reprimands in the last 12 months of employment.

The new law gives employers a head start in avoiding unemployment claims: develop policies that address these points (primarily alcohol and drugs, absenteeism) and document performance issues with regular warnings. Minimizing claims by those who lost their jobs for their own wrongdoing, in violation of clear rules, will help employers keep down their unemployment tax, maybe even enough to help hire another worker.

**TIP**

Starting November 1, 2011, employers will have a host of new defenses to claims for unemployment benefits; taking advantage of the new rules means, among other things, having thorough drug, alcohol and absenteeism policies and addressing performance problems with regular written reprimands.



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