

## **Information on Unemployment Benefits Following Termination**

If the employer opposes an employee's application for unemployment benefits after the employee has been terminated, but before the appeal of the termination has been heard, TWO ARGUMENTS SHOULD BE MADE by the employee at the hearing regarding this dispute:

- 1) The "discharge" is not final until the pending appeal is decided, so the denial of benefits based on section 1256 of the Unemployment Insurance Code can't apply until the appeal is decided.
- 2) A "discharge for misconduct" is a basis for denying unemployment benefits only if the misconduct involved intentional and willful disregard of the employer's interests, . . . so this intent and willfulness must be alleged by the employer and proven before the unemployment benefits can be properly denied. (Cite to the *Rowe* and *Delgado* cases on the next page).

## **Statute Regarding Eligibility for Unemployment Insurance Benefits Following Termination**

**CA Unemployment Insurance Code § 1256. Disqualification; voluntary leaving without good cause; discharge for misconduct**

**An individual is disqualified for unemployment compensation benefits if the director finds that he or she left his or her most recent work voluntarily without good cause or that he or she has been discharged for misconduct connected with his or her most recent work.**

**An individual is presumed to have been discharged for reasons other than misconduct in connection with his or her work and not to have voluntarily left his or her work without good cause unless his or her employer has given written notice to the contrary to the department as provided in Section 1327 setting forth facts sufficient to overcome the presumption. The presumption provided by this section is rebuttable.**

An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party, shall not be deemed to have left his or her work without good cause.

An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to accompany his or her spouse or domestic partner to a place from which it is impractical to commute to the employment. For purposes of this section "spouse" includes a person to whom marriage is imminent.

An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to protect his or her children, or himself or herself, from domestic violence abuse.

An individual shall be deemed to have left his or her most recent work with good cause if he or she elects to be laid off in place of an employee with less seniority pursuant to a provision in a

collective bargaining agreement that provides that an employee with more seniority may elect to be laid off in place of an employee with less seniority when the employer has decided to lay off employees.

### Cases:

Employee-claimant may not be "disqualified" for unemployment compensation benefits under this section providing that individual is disqualified for unemployment compensation benefits if found to have left most recent employment without good cause where there has been termination of employment which is not attributable to his own "fault." *Lewis v. California Unemployment Ins. Appeals Bd.* (App. 1 Dist. 1976) 128 Cal.Rptr. 795, 56 Cal.App.3d 729

Mere fact that employer has and exercises right to fire employee does not prove that employee has engaged in such misconduct as will disqualify employee from receiving unemployment compensation. *American Federation of Labor v. Unemployment Ins. Appeals Bd.* (App. 2 Dist. 1994) 28 Cal.Rptr.2d 210, 23 Cal.App.4th 51, modified on denial of rehearing

Under this section providing that an individual is disqualified for unemployment compensation benefits if he has been discharged for misconduct connected with his most recent work, **term "misconduct" is limited to conduct evincing such wilful or wanton disregard of an employer's interest** as is found in deliberate violations or disregard of standards of behavior which employer has right to expect of his employee, or in carelessness or negligence of such degree, or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of employer's interest or of employee's duties and obligations to his employer. *Delgado v. California Unemployment Ins. Appeals Bd.* (App. 1 Dist. 1974) 116 Cal.Rptr. 497, 41 Cal.App.3d 788.

**Word "misconduct" as used in this section** providing that an individual is disqualified from unemployment compensation benefits if he has been discharged for misconduct connected with his most recent work **is limited to conduct evincing such wilful or wanton disregard of an employer's interests** as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of his employee; mere inefficiency, unsatisfactory conduct, failure in good performance or the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances or good-faith errors in judgment or discretion do not constitute misconduct. *Rowe v. Hansen* (App. 3 Dist. 1974) 116 Cal.Rptr. 16, 41 Cal.App.3d 512