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MISCONDUCT IN THE WORKPLACE AND UNEMPLOYMENT BENEFITS: A HUMAN RESOURCE MANAGER'S GUIDE

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ABSTRACT

Business can decrease unemployment taxation by defeating claims involving employee misconduct. The misconduct required to defeat an unemployment compensation claim is greater than misconduct sufficient for discharge. The human resource manager is in a unique position to lessen the business' unemployment taxation by understanding this distinction and planning accordingly. The history and purposes of unemployment compensation are reviewed, followed by cases in the four most common areas of misconduct: violation of work rules, insubordination, drug and alcohol use, and absenteeism and tardiness. Recommendations for human resource managers conclude the article.

While unemployment taxes cannot be completely avoided, they can be minimized by lowering the employer's experience rating. Is it worth it to take steps to minimize the experience rating? The answer is yes. According to one source, a typical New York company will pay between $25,000 and $70,000 per calendar year for each $1 million in taxable wages [1]. Minimizing the experience rating is largely within the control of the human resource manager. Claims control and documentation by the human resource manager, coupled with proper preparation and presentation of the employer's case, will minimize successful unemployment compensation claims.

There are two main areas where the employer can defeat an unemployment compensation claim. These are discharges for misconduct and resignations without good cause [2]. There is much litigation in the area of misconduct, although cases are more likely to be found in favor of the employee because of

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the liberal nature of the unemployment compensation scheme. Following a historical perspective on unemployment compensation, cases will be analyzed in four areas of misconduct: violation of work rules, insubordination, drug and alcohol use, and absence and tardiness. Cases from Illinois will be used as exemplars. Illinois courts frequently use decisions from other states as persuasive authority in interpreting the law [4].

HISTORICAL PERSPECTIVE

The federal government created the unemployment compensation system in 1935 as part of the Social Security Act to provide temporary and partial wage replacement to workers who involuntarily lose their jobs [5]. All fifty states have unemployment compensation laws based on the premise that benefits should be provided workers to assist them in meeting living expenses until another job can be acquired [6]. As such, the statutes are interpreted liberally in favor of providing benefits for the claimant. Nevertheless, the benefits are a conditional right, and the burden of establishing eligibility rests with the claimant.

Misconduct on the part of the claimant will result in denial of unemployment compensation benefits. The Illinois Supreme Court first defined misconduct in *Jackson v. Bd. of Review*, based on a definition from a Wisconsin case.

> [T]he intended meaning of the term "misconduct" . . . is limited to conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the 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 the employer's interests or of the employee's duties and obligations to his employer. On the other hand, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed "misconduct" within the meaning of the statute [8, at 259-60; 640].

Most states do not statutorily define misconduct, relying on the courts to fashion the definition. The same year the misconduct definition was adopted by the Illinois Supreme Court, the Illinois General Assembly began consideration of an amendment to the unemployment compensation law that would ultimately create a statutory definition of misconduct. It became effective in 1988.

> [T]he term "misconduct" means the deliberate and willful violation of a reasonable rule or policy of the employing unit, governing the individual's behavior in performance of his work, provided such violation has harmed the

employing unit or other employees or has been repeated by the individual despite a warning or other explicit instruction from the employing unit [9].

THE THREE ELEMENTS OF MISCONDUCT

Based on the statutory definition, three elements of misconduct are sufficient to deny unemployment compensation benefits to a claimant:

1. A showing of willful and deliberate conduct,
2. based on a reasonable employer rule, and
3. a) the employer suffers some harm, or
   b) the conduct was repeated in the face of a warning.

Whether the element of harm requires actual harm to the employer, or only the potential for harm, has caused a split in the Illinois appellate court [10]. In many instances, the conduct of the employee may have justified being discharged, but did not rise to the level of willfulness to deny unemployment benefits. Incapacity, inadvertence, negligence, or inability to perform assigned tasks will not be enough to deny benefits [15].

VIOLATION OF WORK RULES

Misconduct Found

Misconduct requires the willful violation of a reasonable work rule. The court can find the existence of a reasonable rule or policy through a common-sense realization that some behavior intentionally and substantially disregards an employer's interest. Examples of common-sense rules are those against theft, lying, and fighting at the workplace. If an employer rule is not a common sense rule, then the rule needs to be communicated to the employees in such a way that violation of the rule can be viewed arguably as a willful act.

In *Lachenmyer v. Didrickson*, claimant was a staff auditor for Archer-Daniels Midland Corporation [16]. Claimant was involved in two separate incidents while on an out-of-town auditing assignment in which he swore at a fellow auditor and shoved another auditor into a wall. After these incidents were reported to claimant's supervisor, a verbal warning was given. That warning was specific about the employer's intolerance for swearing, pushing, and shoving. One month later, claimant threw a paper folder at the lead auditor, who was also claimant's direct supervisor on the assignment. When the auditors returned to ADM headquarters, the incident was reported to the claimant's supervisor, who spoke with claimant about the incident and then discharged the claimant [16].

The court did not accept claimant's characterization of the final incident as evidence only of personality conflicts with fellow employees. "Common sense implies the existence of a policy against not only physical threats and violence

but also throwing objects at supervisors even if [claimant] had not been warned about getting along with fellow workers" [16, p. 99]. The existence of harm to the employer was found in the inability of other auditors to perform their duties because no one would work with claimant after these incidents [16].

Brodde v. Didrickson involved a production supervisor who violated company safety rules by putting her hands into a machine to manually remove cartons that were jamming [13]. Production had been halted for several hours before claimant violated the work rule. She attempted to contact her immediate supervisor and the maintenance manager. In order to put her hands into the machine, she had to bypass a safety system on the machine by switching off a moveable plastic safety shield that would have prevented her from reaching into the machine. Claimant's reason for violating the known safety rule was to complete a production schedule set by the employer. Claimant knew of the danger when she violated the rule [13].

The employer successfully argued that not only had claimant violated a reasonable work rule, but also that her conduct set a poor example for others under her supervision. That, coupled with the potential for injury for which the employer would have been liable, amounted to harm to the employer under the statute [13].

Other misconduct sufficient to deny unemployment benefits have included falsifying time records [17], lying that a spouse was unemployed, had no insurance, and then submitting claims to the employer for payment [18], stealing items from the employer [19], fighting on the employer's premises [20, 21], and failure to follow rules on banking procedures and failure to perform commodity counts [23].

No Misconduct

Adams v. Ward involved a janitor who admitted throwing out two uniforms, which were later retrieved from the trash by another employee [24]. The employer was a printer, and uniforms used by the employees were typically stained with printer's ink. The soiled uniforms were to be put in a laundry bin in the locker room. The claimant testified that when he cleaned the locker room, he found the two soiled uniforms on the floor in a pile of trash. He believed they were intended to be thrown away. He found other uniforms in the trash when he threw the two uniforms away, although he said he did not put them there. Claimant was discharged the day after the incident [24].

The employer tried to show that the conduct was willful by showing claimant had once said that he wasn't going to be picking up "after a bunch of babies," suggesting other employees simply had thrown the uniforms on the floor of the locker room instead of putting them in the laundry bin and claimant had refused to pick them up [24].

As to the rule itself, the employer argued there was an implicit rule requiring care for the employer's property, based on the duty of loyalty and fidelity of the employer. Claimant asserted no reasonable rule existed. He was never told to

place all uniforms in the laundry regardless of condition. No job description for claimant was provided by the employer [24].

The court found no reasonable rule existed. No policy on disposal of uniforms was articulated through testimony. If the janitor was not to make any determination about the condition of uniforms, someone must have been responsible, yet no person was so identified. The court believed the claimant's version of events. Claimant simply picked up two ink-stained uniforms in a pile of trash and threw them out, believing they were intended for the trash and not the laundry. The court also found no harm to the employer. The uniforms were retrieved, and the conduct could not be repeated by claimant since he was discharged. Therefore, this case failed on all three elements of misconduct. There was no intentional or willful conduct, no reasonable work rule, and no harm to the employer [24].

In *Hoffmann v. Lyon Metal Products*, claimant was fired for attempting to leave work with an extension cord he intended to borrow and return the following Monday [12]. The employer had two policies in a handbook regarding removal of property from the plant. One was a "scrap pass" and the other was a "package pass," although a representative of the employer testified using the term "scrap pass" to refer to either. The scrap pass was meant for property intended to be discarded and allowed an employee to take scrap items home to keep. The package pass appeared to be for any other employer property removed from the premises by an employee [12].

Although the two policies were separate and clear in the handbook, the testimony of the claimant and representatives of the employer indicated that "borrowing" of items by employees and returning them was a common occurrence. An employer representative testified that a scrap pass was the same as a package pass. Claimant consistently stated at the time he was stopped at the plant and throughout the hearing that he did not believe a scrap pass was needed since he intended to return the item. Evidence established that this was a common occurrence the employer was trying to curb [12].

The claimant ultimately won his unemployment benefits because his violation of the policy was not willful or deliberate and also because no harm came to the employer. Although the employer's witnesses testified the company needed to know where its equipment was at all times and that tended to show its policy was reasonable, the employer did not establish harm. While discharging the claimant may have been justified as part of the employer's attempt to consistently enforce its policies, claimant was still entitled to unemployment compensation benefits [12].

Other cases that have found no misconduct for violating an employer rule included a medicar driver who had four accidents backing the employer's vehicle into stationary objects [25], a bus driver who made unauthorized stops due to physical necessity to use the bathroom [11], failure to properly perform janitorial duties [15], and improperly using the employer's name on an insurance quote form [26].

INSUBORDINATION

Insubordinate conduct by an employee generally disqualifies her/him from unemployment compensation benefits. These cases turn on the question of when the employee's conduct ceases to be a reasonable assertion of his/her position and becomes a refusal to recognize authority.

Misconduct Found

In *Carroll v. Board of Review*, an assistant store manager for Musicland was fired by his supervisor when she (the supervisor) came into the store, found it in an unpresentable condition and, when she attempted to question him about it, was met with profanity and questioning of her authority to discharge him [27]. Although the assistant manager denied using profanity and said he only questioned her ability to fire him without the approval of the district manager, the referee at the hearing had the opportunity to observe the demeanor of the witnesses and found that, although the language used was moderate, there was a clear rejection of a reasonable management directive (to clock out), and the assistant manager was therefore insubordinate. The Board of Review, trial court, and appellate court all agreed that the referee's decision was not against the manifest weight of the evidence.

Stovall v. Dept. of Employment Security involved a medical secretary who had trouble getting along with her coworkers [28]. Claimant had been "written up" regarding the length of time it took to complete her work, the number of errors, and the number of times work had to be returned to her for corrections. Claimant believed other workers were harassing her and her supervisors were conspiring to discharge her. On one occasion, claimant went into her supervisor's office and yelled at the supervisor, which was heard by other employees [28].

Ten days later, claimant admitted she had taken work home with her, which was a violation of policy since medical records were confidential. She was told that under no circumstances could she take work home. She was also seen allowing a coworker to read a memo before it was intended to be distributed to staff [28].

At a meeting the same day to discuss these matters, claimant accused a coworker of lying and walked out of the meeting when she in turn was accused of lying. She was persuaded to return to the meeting and called her supervisor a liar, telling her "I don't have to do anything you tell me to do." She was discharged. The court upheld the board's determination that claimant was insubordinate and not entitled to benefits [28].

No Misconduct

In *Gee v. Board of Review*, the court stated the acts relied on to disqualify the claimant from unemployment benefits did not rise to the level of misconduct for

insubordination "where [claimant] merely argued with her supervisor in his office without using abusive language or threatening to disobey a work order [29]. Merely being argumentative is not sufficient for discharge for misconduct" [29, pp. 1029-1030]. Although this case involved the typical differences in testimony about what happened, it appears that on the day of claimant's discharge, she asked whether she could leave early and was told she could if she completed her work. She worked through her lunch period, which was normally unpaid, and was told she could not leave because her work was not complete. She believed this was unfair since she had given up her lunch period to try to complete the work, and she then argued with her supervisor about it. She and the supervisor had had previous disputes about a shortage on her time card and a request to work Saturday on short notice—when claimant usually did not work on Saturday [29].

The employer's policy manual stated that "[d]isputes and bickering between a worker and his supervisor are generally not considered misconduct connected with work provided they are conducted without threats of violence and intemperate or loud language or do not constitute a refusal to comply with a reasonable request of the supervisor" [29, p. 1029]. The manual also provided for an unpaid forty-five-minute lunch period and a system of progressive discipline for offenses such as "using threatening or abusive language to any management representative." Further, employees were encouraged to communicate complaints or questions by informally discussing them with their supervisor. The Board of Review's denial of unemployment compensation benefits to claimant was found to be against the manifest weight of the evidence. The trial court reversed the board's denial, and the appellate court affirmed [29].

A refusal to discuss customer complaints with a supervisor without being paid for the time was not found to be insubordinate in *Crowley v. Dept. of Employment Security* [30]. While it is clear an employee has a duty to discuss with his/her supervisor complaints regarding job performance, it is unclear whether the employer must pay wages for the time spent in discussion. Here, the claimant believed the employer had to pay him for such time, and refused to discuss the complaints without being paid. There was no indication that he refused to discuss the complaints at all. The Fair Labor Standards Act [31] was made applicable to mass transit companies such as the bus company for which claimant worked [32]. Under that statute and federal regulations, an employer is required to pay wages for mandatory attendance at meetings.

The court stated that while the claimant may have knowingly disobeyed his employer's order to discuss customer complaints without being paid, he had a justifiable, good-faith belief that his employer was violating the Fair Labor Standards Act. Good faith errors in judgment do not constitute misconduct for purposes of unemployment compensation [32].

DRUG AND ALCOHOL USE

Employers have a good chance of defeating a claim for unemployment benefits when the reason for discharge is drug or alcohol use. Drug use, whether during work hours or not, can be the basis for a misconduct claim if evidence of the illegal drug is in the employee's system during work hours, even if the employee is not impaired. Alcohol use, since it is a legal off-work activity [33], can be the basis for misconduct if ingested during work hours or if the employee is impaired by the off-work use of alcohol.

Misconduct Found

In *McAllister v. Board of Review*, a bus driver was required to take a drug test when he left his empty bus and it rolled forward and struck a guard rail. The test was positive for cocaine, which he had used after work six days earlier. The employer's personnel handbook had a rule prohibiting any controlled substances in the employees' systems during work hours. The rule was required by Illinois law and federal law to be eligible for federal funding. The court found the rule to be reasonable, even though it regulates off-duty conduct. Further, no specific harm need be shown by the employer. The court distinguished this case from others that required a showing of harm because of the "serious issue of the safety of passengers on public transportation" [34, p. 600].

The requirement of harm to the employer was not discussed in *Robinson v. Dept. of Employment Security* because the conduct was repeated after warning [35]. Claimant was a spray painter of cabinets and computers. One day he received a scratch at work and was sent to the medical department to take a drug test. It was positive for morphine and marijuana. He was given the option of drug rehabilitation services, which he refused. He was told he would be subject to further unannounced drug tests over the following eighteen months. About a year later, he was required to take an unannounced drug test, which was positive for cocaine and marijuana. He was then discharged [35].

There was no evidence that drug use had ever caused claimant to be impaired at work. His work was not dangerous and did not involve public transportation as the previous case did. In fact, because claimant was such a good worker, the employer "hate[d] to lose [claimant] but its substance abuse policy was mandatory to retain government contracts" [35, p. 632]. The court found claimant had violated a reasonable work rule. Although the claimant was never impaired at work, harm to the employer was not necessary because this was a repeated violation of a work rule.

Other successful cases finding misconduct involving drug or alcohol use include those where the claimant was found under the influence of alcohol and in an unauthorized area outside of usual work hours [36], or was drinking on the job when prior warnings were given [7], or was suspended for more than seven

days when claimant tested positive for cocaine at a company physical following sick leave [37].

No Misconduct

Only one case has considered whether the disease of alcoholism could have prevented a claimant from deliberate or willful conduct. In *Meneweather v. Board of Review*, the appellate court remanded the case to the circuit court with instructions to order the Board of Review to institute further proceedings to ascertain the extent of claimant's alcoholism and her volitional capacity to commit misconduct [38]. After her discharge, claimant completed an alcohol treatment program at her own expense [38].

The actual reason for claimant's discharge was excessive tardiness and absenteeism. She appeared at the processings *pro se*. After the referee affirmed the denial of benefits, claimant appealed the case to the Board of Review with the assistance of counsel. The Board of Review and the circuit court both found claimant had not established her alcoholic condition by competent medical evidence. In remanding the case, the appellate court believed, since the claimant was *pro se*, the referee had a duty to assist the claimant in soliciting material evidence and developing a full record [38].

While this case does not deal with alcohol use on the job, it does show a possible ground for avoiding a finding of misconduct. If alcoholism is established by competent medical evidence, claimant may be able to argue that s/he could not control the drinking and therefore could not have deliberately violated a work rule on alcohol use.

ABSENTEEISM AND TARDINESS

Absenteeism can be problematic in the unemployment compensation area. The reasons for being absent or tardy are important in determining whether the employee deliberately violated a work rule on attendance. Call-in procedures can be used, so that the employer can argue that the employee was discharged for failure to follow the employer rule on call-in, rather than on the absence itself.

Misconduct Found

In *Medvid v. Dept. of Employment Security*, claimant was fired after failing to show up for work twice and only calling in one of those times, and calling in sick twice when she was actually working at another job [39]. The court upheld the determination of misconduct for failing to call in once, and calling in twice with a false reason for her absence [39].

Bochenek v. Ill. Dept. of Employment Security involved a man with schizoaffective psychosis who was on medication [40]. He had a chronic absenteeism

and tardiness problem over the course of six years of working for this employer. Toward the end of his employment and over a period of eighty-eight work days, he was absent seven days and, over a period of eighty-one days, he was tardy nine times. Claimant had been warned about the problem. On the day of discharge, claimant was tardy forty-five minutes [40].

While claimant presented medical evidence in the form of a statement from his physician, the statement did not indicate the condition affected his attendance. The statement did say the physician did not know how the employee was able to keep his job for six years. Nevertheless, the court found claimant guilty of misconduct and disqualified him from unemployment compensation benefits [40].

No Misconduct

In *London v. Dept. of Employment Security*, the claimant was not guilty of misconduct when she was six minutes late due to traffic and construction on the Dan Ryan Expressway in Chicago [41]. Of course, this was not the first time claimant had been late. There had been a chronic problem, although the employer had allowed her to come to work at a later time because her family had only one car and she needed to transport her husband to work in Indiana and her daughter to school before she came to work. There were warnings to improve her tardiness and to make other arrangements so she could get to work by 8 A.M. She did not come to work at all on one day, although she called in, because a family member was in jail and she had to attend to that matter. She was suspended for three days following that incident. The next time she was late, which was six minutes due to traffic, she was fired [41].

As to the specific instance when she was tardy and fired, the court found her tardiness unavoidable. Although she had a history of tardiness, the court found the previous permission to come to work late and a succession of different controllers at the company to have created confusion as to whether she was required to report at 8 A.M. All of these circumstances did not show a willful and deliberate disregard for her employer's interests [41].

When claimant was not paid for his prior work, he failed to come to work for about five days in *Garner v. Dept. of Employment Security* [42]. The evidence showed that claimant, a janitor, had not been paid in a timely manner on a number of occasions. He was supposed to be paid twice a month. His checks arrived, if at all, after the second and sixteenth of the month. On the occasions when no check was received, claimant would take a day off work and drive to company headquarters to pick up the check. No duplicate was ever received through the mail when claimant picked up the check personally [42].

During a week in August, beginning on the fifth of the month, claimant had not received his check and failed to come to work. When called at home, he agreed to come in, but told his supervisor if he had not received a check by the next day, he

would not be coming in to work. On the sixth of the month through the ninth, he called in every day and indicated he would not be coming to work because he had not been paid. He received his check on the ninth and reported for work on the twelfth. He was discharged on that date [42].

The court found that while requiring an employee to call in to report an absence is a reasonable policy, it is not reasonable for an employee to have to call in to report his own absence when the absence relates to the chronic nonpayment of wages. Since there was no evidence of harm to the employer, the employer needed to establish a violation in the face of a warning. There was no evidence that claimant had been warned that his absences would result in discharge [42].

RECOMMENDATIONS FOR MANAGERS

Human resource managers need to remember there may be good reasons for a discharge, although the employee may still be entitled to unemployment compensation benefits. The point is not to defeat all claims, but to recognize those that can be defeated and present a thorough case at the earliest possible time. The creation and publication of reasonable work rules and documentation of violations are also important. The following are steps the human resource manager should consider in planning to contain the unemployment experience rating:

1. Review all work rules and whether they are appropriate for the applicable jobs.
2. Consider whether some "implied" work rules need to be made explicit so that the employer does not have to rely on the common-sense work rule theory.
3. Document all violations of work rules and warnings to employees.
4. Write a protocol regarding when the employer's attorney should become involved. The attorney can either represent the employer in the process or instruct the human resource manager on the evidence needed to contest the claim and represent the employer.
5. Ask about the claimant's version first if a claims adjudicator from the unemployment compensation board calls the employer for its version of the facts. This allows the employer to focus on deficiencies in the claimant's version and anticipate the employer's defense.
6. Comply strictly with notices of hearing dates, decisions, response dates, and such, or seek continuances if needed, to avoid the imposition of penalties or loss of protest rights.
7. Prepare the employer's case well from the beginning. Findings of the fact at the lowest level are seldom overturned later. Expend effort fighting the claim at the earliest time, rather than on appeal.
8. Remember that you can't win them all. Some claimants are entitled to benefits. Employers should choose carefully which cases to contest.

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ENDNOTES

1. R. Arnold, Controlling Unemployment Insurance Costs, *Management Accounting, 75*, pp. 21-23, 1993.
2. For a discussion of resignations without good cause, see Perry [3].
3. S. J. Perry, Unemployment Compensation Benefits for Employees Who Voluntarily Leave: A Human Resource Manager's Guide, *Labor Law Journal, 47*, pp. 707-716, 1996.
4. Those states have included California, Colorado, Connecticut, Kansas, Louisiana, Massachusetts, Minnesota, New Jersey, New York, Ohio, Oregon, Pennsylvania, Vermont, and Wisconsin.
5. J. Zuckman, How the System Works, *Congressional Quarterly Weekly Report, 51*, p. 2651, 1993.
6. J. H. Coil and C. M. Rice, The Unemployment Compensation Sweepstakes, *Employment Relations Today, 21*, pp. 345-353, 1994.
7. *Jackson v. Board of Review*, 105 Ill. 2d 501, 475 N.E. 2d 879 (1985).
8. *Boynton Cab Co. v. Neubeck*, 237 Wis. 249, 296 N.W. 636 (1941).
9. Unemployment Insurance Act, 820 ILCS 405/602 (1995).
10. There are even conflicts within the same district. *See, Zuaznabar v. Board of Review* [11], a mere potential for injury is not enough to establish harm; *Hoffmann v. Lyon Metal Products, Inc.* [12], recognizing other courts have held that threat of future financial loss caused by conduct of employee is harmful, but refusing to follow; *compare, Brodde v. Didrickson* [13], question of employer harm should be viewed in the context of potential harm and not the narrow context of actual harm; *Bandemer v. Dept. of Employment Security* [14], threat of future financial loss caused by conduct of employee is harmful to employer.
11. *Zuaznabar v. Board of Review*, 257 Ill. App. 3d 354, 628 N.E. 2d 986 (1st Dist. 1993).
12. *Hoffmann v. Lyon Metal Products*, 217 Ill. App. 3d 490, 577 N.E. 2d 514 (2d Dist. 1991).
13. *Brodde v. Didrickson*, 269 Ill. App. 3d 309, 645 N.E. 2d 990 (1st Dist. 1995).
14. *Bandemer v. Dept. of Employment Security*, 204 Ill. App. 3d 192, 562 N.E. 2d 6 (1st Dist. 1990).
15. *Siler v. Dept. of Employment Security*, 192 Ill. App. 3d 971, 549 N.E. 2d 760 (1st Dist. 1989).
16. *Lachenmyer v. Didrickson*, 263 Ill. App. 3d 382, 636 N.E. 2d 93 (4th Dist. 1994).
17. *DeBois v. Dept. of Employment Security*, 274 Ill. App. 3d 660, 653 N.E. 2d 1336 (1st Dist. 1995).
18. *Winklmeier v. Board of Review*, 115 Ill. App. 3d 154, 450 N.E. 2d 353 (5th Dist. 1983).
19. *Ray v. Dept. of Employment Security*, 244 Ill. App. 3d 233, 614 N.E. 2d 196 (1st Dist. 1993).

20. *Meeks v. Dept. of Employment Security*, 208 Ill. App. 3d 579, 567 N.E. 2d 481 (1st Dist. 1990).
21. But see, *Rias v. Dept. of Employment Security*, where fighting in self-defense, when there was no opportunity to withdraw to a place of safety, was found not to be misconduct, citing cases from Arkansas, Florida, Louisiana, Oregon, and Pennsylvania [22].
22. *Rias v. Dept. of Employment Security*, 187 Ill. App. 3d 328, 543 N.E. 2d 211 (1st Dist. 1989).
23. *Perto v. Board of Review*, 274 Ill. App. 3d 485, 654 N.E. 2d 232 (2d Dist. 1995).
24. *Adams v. Ward*, 206 Ill. App. 3d 719, 565 N.E. 2d 53 (1st Dist. 1990).
25. *Pesce v. Board of Review*, 161 Ill. App. 3d 879, 515 N.E. 2d 849 (1st Dist. 1987).
26. *Kiefer v. Dept. of Employment Security*, 266 Ill. App. 3d 1057, 640 N.E. 2d 1252 (1st Dist. 1994).
27. *Carroll v. Board of Review*, 132 Ill. App. 3d 686, 477 N.E. 800 (2d Dist. 1985).
28. *Stovall v. Dept. of Employment Security*, 262 Ill. App. 3d 1098, 640 N.E. 2d 299 (1st Dist. 1994).
29. *Gee v. Board of Review*, 136 Ill. App. 3d 889, 483 N.E. 2d 1025 (1st Dist. 1985).
30. *Crowley v. Dept. of Employment Security*, 190 Ill. App. 3d 900, 546 N.E. 2d 1042 (2d Dist. 1989).
31. Fair Labor Standards Act, 29 U.S.C.A. §201 *et. seq.* (1988).
32. *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 105 S.Ct. 1005 (1985).
33. Right to Privacy in the Workplace Act, 820 ILCS 55/5 (1992).
34. *McAllister v. Board of Review*, 263 Ill. App. 3d 207, 635 N.E. 2d 596 (1st Dist. 1994).
35. *Robinson v. Dept. of Employment Security*, 264 Ill. App. 3d 659, 637 N.E. 2d 631 (1st Dist. 1994).
36. *Mattson v. Dept. of Labor*, 118 Ill. App. 3d 724, 455 N.E. 2d 278 (4th Dist. 1983).
37. *Overstreet v. Ill. Dept. of Employment Security*, 168 Ill. App. 3d 24, 522 N.E. 2d 185 (1st Dist. 1988).
38. *Meneweather v. Board of Review*, 249 Ill. App. 3d 980, 621 N.E. 2d 22 (1st Dist. 1992).
39. *Medvid v. Dept. of Employment Security*, 186 Ill. App. 3d 747, 542 N.E. 2d 852 (1st Dist. 1989).
40. *Bochenek v. Ill. Dept. of Employment Security*, 169 Ill. App. 3d 507, 525 N.E. 2d 893 (1st Dist. 1988).
41. *London v. Dept. of Employment Security*, 177 Ill. App. 3d 276, 532 N.E. 2d 294 (1st Dist. 1988).
42. *Garner v. Dept. of Employment Security*, 269 Ill. App. 3d 370, 646 N.E. 2d 3 (2d Dist. 1995).

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