



LABOR & EMPLOYMENT DEPARTMENT

ALERT

NEW LAW MAKES IT MORE DIFFICULT FOR DISCHARGED NJ EMPLOYEES TO COLLECT UNEMPLOYMENT BENEFITS

By Ian W. Siminoff

In an effort to ease the tax burden on businesses while reducing the shortfall in New Jersey's unemployment insurance fund, Governor Christie recently enacted a new law that, in pertinent part, changes the way misconduct is defined in the unemployment compensation context. The law makes it more difficult for discharged employees to collect unemployment benefits. The changes are projected to save New Jersey \$150-\$175 million annually.

Under prior New Jersey unemployment law, there were two misconduct standards resulting in either delayed benefits or disqualification from receipt of benefits.

- The first, "misconduct," resulted in a six-week delay of benefits.
- The second, "gross misconduct," resulted in total disqualification.

Under the new law, there are now three misconduct standards: simple, severe and gross. Two of the three misconduct standards, severe and gross, result in total disqualification, thereby increasing the chance of a total disqualification result.

"**Simple misconduct**" (formerly "**misconduct**") is defined as an act of wanton or willful disregard for the employer's interest, or negligence as to manifest culpability, that does not rise to the level of severe or gross misconduct. This standard would appear to include

insubordination, or lateness or absences without written warnings. A simple misconduct disqualification carries an eight-week (up from six week) disqualification. After the disqualification period ends, the individual is eligible to collect benefits.

The new "**severe misconduct**" standard expressly covers the following behaviors:

- Excessive use of drugs/alcohol on work premises;
- Repeated violations of a company rule;
- Repeated lateness or absences after receiving a written warning;
- Falsification of records;
- Physical assaults or threats that do not constitute gross misconduct;
- Destruction/theft of company property;
- Misuse of sick time, benefits or abuse of leave; and/or
- Behavior that is malicious and deliberate but not considered gross misconduct.

If an employee is discharged for severe misconduct, the individual is disqualified for benefits indefinitely until he or she works in new employment for four weeks, earns six times his or her weekly benefit amount and thereafter becomes separated through no fault of his or her own.

"**Gross misconduct**" remains defined as criminal conduct of the first, second, third or fourth degree under

the New Jersey Code of Criminal Justice. However, to remove a gross misconduct disqualification, an individual must return to work for at least eight weeks (previously four weeks), earn ten times his or her weekly benefit rate (previously six times) and subsequently become unemployed through no fault of his or her own.

Concluding Thoughts

In sum, because the newly minted, intermediate severe misconduct standard imposes total rather than temporary disqualification for behavior that might have fallen under the former “misconduct” standard (including “repeated violation of an employer’s rule or policy,” “repeated violations of a company rule,” “repeated lateness or absences after a written warning” and the catch-all “behavior [that] is malicious and deliberate”) it is expected that fewer terminated employees will receive unemployment benefits.

We recommend that employers, to the extent they enumerate the bases for termination in their Employee Handbooks, include the terminable conduct set forth in the new law, and consistently enforce those conduct

standards. Doing so may serve to lessen the chances terminated employees collect unemployment benefits. Of course, employers should indicate that the terminable conduct identified in their Handbooks are mere examples and that employees remain at-will and can be terminated, with or without cause, for any or no reason, at any time.

Proposed regulations implementing the law were published in the November 15, 2010 edition of the *New Jersey Register*. Therein, the New Jersey Department of Labor expresses hope the changes will obviate “unnecessary litigation.” Given the uproar of the plaintiffs’ employment bar in response to the new law, such hope may be just that. The Department will conduct a public hearing concerning the proposed regulations on December 17, 2010. The comment period concerning same expires on January 14, 2011. We will update you on any further developments.

For more information regarding this Alert, please contact Ian W. Siminoff at 973.994.7507 or isiminoff@foxrothschild.com, or any member of Fox Rothschild’s Labor & Employment Department.



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