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## **- UNEMPLOYMENT INSURANCE BENEFITS - WILLFUL MISREPRESENTATIONS & MISCONDUCT**

Section 594 of the Unemployment Insurance Law provides that "a claimant who has wilfully made a false statement or representation to obtain any benefit ... shall forfeit benefits for at least the first four but not more than the first eighty effective days following discovery of such offense ...". It further provides that the claimant shall be deemed to have received benefits for such forfeited effective days", and that "A claimant shall refund all moneys received because of such false statement ...". Yesterday, I received a favorable decision on a matter. A claimant was denied benefits due to misconduct and I was able to establish that the actions complained of were not misconduct; however, when the claimant first filed the claim, the claimant made a statement that employment was terminated due to the economy, despite the fact that it was clear that the claimant's employer was not happy with the performance of the claimant. A determination and four day penalty of willful misrepresentation was also made by the Department of Labor and that determination was upheld by the Appeals Board. Now although the penalty only amounted to a few hundred dollars and the benefits the claimant will receive will be over \$20,000, it is a reminder that in claiming benefits, the Department of Labor, after their investigation on a contested claim, may make a penalty determination for willful misrepresentation and 'willful' does not imply a criminal intent to defraud but means 'knowingly', 'intentionally', 'deliberately' to make a false statement. (*Matter of Vick*, 12 AD 2d 120). If you are discharged for an alleged misconduct, you may want to contact an attorney before you make your claim for unemployment benefits. An attorney can research the law, make sure your application is proper and avoid the risk of a determination of "willful misrepresentation". But in any case, be honest and truthful when filing your application and remember, just because your employer is unhappy with your work, there remain circumstances which would not justify the imposition of a disqualification for misconduct, including:

1. Mere inefficiency.
2. Inadequate performance as the result of inability or incapacity Inadvertence or ordinary negligence in isolated instances (not from gross negligence, indifference, or recurrent

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carelessness).

3. Good faith errors in judgment or discretion.

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