

**Please Note: Despite this document's original publication date, it remains a valid resource on the relevant subject matter. Statutory changes are noted to reflect current law. (6/2012)**

## MISCONDUCT UNDER EMPLOYMENT SECURITY LAW

Referenced sections of law and cases

October 24, 1991

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Section 1193(1) of the Employment Security Law provides, in part, for a disqualification if it is found an individual left regular employment voluntarily without good cause attributable to that employment. Good cause attributable to the employment means that the reason for leaving work must be directly related to the working conditions.

Section 1193(2) of the Employment Security Law provides, in part, that an individual shall be disqualified for benefits if he has been discharged for misconduct connected with his work.

Section 1043(23) of the Employment Security Law defines misconduct as conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violation or disregard of standards of behavior which the employer has a 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 obligation to his employer.

Chapter 18 of the Rules Governing the Administration of the Employment Security Law states "A discharge is a termination of the employer-employee relationship which is initiated by the employer and which entitles the claimant to unemployment compensation benefits unless he is discharged for misconduct under subsection 2 of Section 1193 of the Employment Security Law. The burden of proof is on the employer to prove that the employee's conduct meets the statutory definition of misconduct.

In Brousseau v. Maine Employment Security Commission, 470 A.2d 327 (Me. 1984), the Maine Supreme Judicial Court has held that in order for a claimant to be disqualified under Section 1193(1)(A), it is necessary that he/she leave "voluntarily" by "freely making an affirmative choice to do so."

The Maine Supreme Judicial Court has held that "the statute sets a rule of reason, to be objectively applied based on the totality of the circumstances, not solely on the basis of a violation of a reasonable rule." Moore v. Maine Department of Manpower Affairs, et al., 388 A.2d 516, 519 (Me. 1978).

Moore requires that it first be determined whether an employer's rule is reasonable, and if so, then whether the claimant's behavior in violation of that reasonable rule was unreasonable under all the circumstances. Inherent in Moore is that a reasonable rule must be reasonably communicated and reasonably applied.

In Look v. Maine Unemployment Insurance Commission, 502 A.2d 1033 (Me. 1985), the court found that a claimant who lost his license because he was operating under the influence and consequently was discharged because he could not perform his job had acted unreasonably. "The plaintiff knew that his ability to operate a motor vehicle was essential to the performance of his work. NET could reasonably expect that the plaintiff would not lose his license as a result of OUI conviction. The legislature has made it quite clear that individuals who choose to operate a motor vehicle after drinking intoxicating liquor face serious penalties, including the risk of license suspension. See 29-A M.R.S.A. Section 2411. Considering the totality of the circumstances, the plaintiff's decision to risk the loss of his license to operate a motor vehicle, an essential requirement of his job, is conduct that objectively constitutes an intentional and substantial disregard of the employer's reasonable interests."

In Lemay v. Ouellette, Kennebec Superior Court, Docket No. CV-77-428 (1979), the Court stated that "hotheaded incidents" do not necessarily constitute misconduct. If the anger of the claimant is reasonably understandable and results only in harsh words, and there have been no previous similar incidents, then an employer would be hasty in dismissing the claimant.

Section 1193(7-A) of the Employment Security Law provides, in part, that an individual shall be disqualified for benefits subsequent to a discharge arising from his absence from work for more than two workdays due to his incarceration for conviction of a criminal offense.

The Maine Supreme Judicial Court has held that the claimant's behavior must be evaluated to determine whether the conduct for which the employee was discharged is, upon an objective standard, unreasonable under all circumstances. The type, degree and frequency of the conduct which resulted in the termination must be evaluated to determine whether it is tantamount to an intentional and substantial disregard of the employer's interests. Sheink v. Maine Department of Manpower Affairs, 423 A.2d 519 (Me. 1980).

Whether or not there was good cause sufficient to warrant the award of unemployment benefits must be measured against a standard of reasonableness under all of the circumstances. Snell v. Maine Unemployment Insurance Commission, 484 A.2d 609, 610 (Me. 1984).