Unemployment claims related to unsatisfactory job performance are often the least understood by employers and often the most difficult type of separation upon which to obtain a disqualification. Understanding the distinction between whether a separation is due to unsatisfactory job performance, which can qualify a claimant for benefits as opposed to willful misconduct, which will more likely result in a disqualification, is the first step and using the correct terminology when responding to a claim is the second. Following the general guidelines below can help determine whether you have a clearly demonstrated case of misconduct or merely a case of poor performance.

**Definition of Misconduct**

States generally define misconduct as deliberate and/or willful acts by an employee that violate local, state, or federal laws, or acts that could cause injury to another person or violate a company’s policy after prior warnings that place the employee’s job in jeopardy. Mere inability to do the job on a consistent basis will not be considered misconduct, even if an employee is warned that continued performance will result in discharge. The employer must prove misconduct to disqualify a claimant from benefits.

**Definition of Unsatisfactory Performance**

Most states define unsatisfactory job performance as the inability to meet company standards or simply the result of someone being asked to perform beyond his/her capability and not a deliberate act. Discharges for unsatisfactory job performance will not automatically disqualify a claimant from unemployment benefits and effective documentation is crucial to proving the case.

**Misconduct vs. Unsatisfactory Performance**

Confusion occurs when “poor performance” is erroneously used to explain all or most separations. It is not considered misconduct if the employee has performed assigned work to the best of his/her ability but simply cannot meet the employer’s standards. This is because there can be no finding of willful and substantial disregard of the employer’s interests.

For example, if an employee has the ability to do the job and has already demonstrated the capability to perform at a satisfactory level, but currently is not working to that level, you are probably looking at a potential misconduct situation. In this case, it will be necessary to begin documenting the steps taken with the employee in an effort to improve performance. It’s important to avoid using the terms: “poor performance”, “inability to meet standards”, or “inefficiency” if an employee is discharged for a willful or deliberate violation of rules or standards.

On the other hand, if an employee demonstrates an inability to do the assigned job or if there is an isolated instance of inefficiency, carelessness, or a “good faith” error in judgment, then they are simply considered not qualified and it would be classified as an unsatisfactory job performance situation. If a new employee does not meet company standards because of poor performance, termination should occur as quickly as possible to minimize company exposure in an unemployment claim.

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