

CHANGES TO UNEMPLOYMENT COMPENSATION LAW BRING GOOD NEWS TO EMPLOYERS DEFENDING UNEMPLOYMENT COMPENSATION CLAIMS

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On June 27, 2011, Governor Rick Scott signed House Bill 7005 into law, implementing several reforms to the Unemployment Compensation law. Described by the Agency for Workforce Innovation as a bill that will “enhance the efficiency and accountability of the Unemployment Compensation Program,” many of the reforms favor employers.

Effective immediately, the new law significantly changes the definition of misconduct. Prior to the amendments, misconduct was defined to include:

- (a) Conduct demonstrating willful or wanton disregard of an employer's interests and found to be a deliberate violation or disregard of the standards of behavior which the employer has the right to expect of his or her employee; or
- (b) Carelessness or negligence to a degree or recurrence that manifests culpability, or wrongful intent, or evil design or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.

Conduct no longer has to be “willful or wanton” under subsection “a” in order to constitute misconduct; this phrase has been replaced with “conscious.” The phrase “evil design” has also been eliminated from subsection “b.” Perhaps most notable are the substantial statutory additions to the definition of “misconduct.” The amendments broaden the definition of misconduct to include:

- (c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.
- (d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.
- (e) A violation of an employer's rule, unless the claimant can demonstrate that:
 1. He or she did not know, and could not reasonably know, of the rule's requirements;
 2. The rule is not lawful or not reasonably related to the job environment and performance; or
 3. The rule is not fairly or consistently enforced.

Importantly, the amendments also make clear that misconduct can include conduct that occurs inside or outside the workplace.

Employers may want to review and revise codes of conduct and similar policies in order to take full advantage of these reforms. While these changes may assist employers in defending claims for benefits by terminated employees, well written policies that are consistently enforced are also important. Likewise, documentation of disciplinary actions and rule violations will help employers put the revisions to use and successfully defend unemployment compensation claims by terminated employees.

Several other changes to the law are effective August 1, 2011. Not only will claimants be required to file claims through the Internet, but they will also be required to contact at least five prospective employers on a weekly basis and to provide this information to AWI. If a claimant is not able to make at least five employer contacts in a week, meeting with a representative in person at a local career center for reemployment services may satisfy this requirement for that week. In addition, claimants filing new claims must complete an initial skills review, which will then be used to refer individuals to training and employment opportunities. Severance pay may also impact entitlement to benefits. Effective August 1, 2011, if a claimant's severance pay per week is equal to or greater than the claimant's weekly benefit amount, the claimant is not entitled to benefits for that week. Also on August 1st, the amended law specifically excludes individuals who are incarcerated from receiving benefits.



Significantly, beginning on January 1, 2012, the maximum duration of benefits will change. Currently, benefits may last up to twenty-six (26) weeks. In the new year, the duration will range between twelve (12) and twenty-three (23) weeks, depending on the state's unemployment rate (the higher the unemployment rate, the longer the duration of benefits).