

Employment Practice Update

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Florida's Unemployment Compensation Law: New Standard for Employee Misconduct

By Christopher B. Lunny and Angela D. Miles



On June 27, 2011, Governor Rick Scott signed into law several amendments to Florida's Unemployment Compensation Law, many of which represent good news for employers. Perhaps most significant is the change to the definition of "misconduct" – the standard for disqualifying an employee from entitlement to unemployment benefits. In Florida, an employee is typically entitled to unemployment benefits unless an employer demonstrates that the employee was discharged for misconduct or voluntarily resigned his or her position without good cause. Demonstrating employee misconduct was, historically, an uphill battle for most employers. That standard, however, has now changed.

Effective June 27, 2011, the definition of "misconduct" was broadened to include behavior that demonstrates "conscious disregard" of the employer's interests and is found to violate the employer's expectations. The change is expressly designed to be a lesser standard than the previous requirement of "willful or wanton" behavior. Additionally, the definition is no longer limited to conduct occurring at the workplace or during working hours. Consequently, an employee's conduct outside the office may be sufficient to demonstrate misconduct and preclude an employee from receiving unemployment benefits. The new law also specifies certain acts that constitute "misconduct" and will disqualify an individual from receiving benefits:

(1) 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.

- (2) A deliberate violation of a Florida standard or regulation that would cause a Florida-certified or Florida-licensed employer to be sanctioned or have its license or certification suspended by the state.
- (3) A violation of an employer's rule, unless the employee can show that (a) he or she did not know about the rule and could not have reasonably known about its existence; (b) the rule is unlawful or unrelated to the job; or (c) the rule is not fairly or consistently enforced.

Given that "misconduct" now includes violating an employer's rule, it is critical for employers to specify employment rules, policies and expectations in an employee handbook and ensure all employees have signed documentation in their personnel files acknowledging their receipt and understanding of the handbook rules.

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While the effects of the new law remain to be seen, one thing is clear: it will now be easier for employers to demonstrate that an employee was discharged for "misconduct" for purposes of disqualifying an employee from entitlement to unemployment benefits. The new definition of misconduct applies to terminations occurring on or after June 27, 2011 and, therefore, will not apply to unemployment compensation proceedings currently underway. If you have any questions regarding the recent amendments or need assistance navigating through the unemployment appeals process, please contact our office at (850) 425-6654.



Christopher B. Lunny

Angela D. Miles

This article is meant to provide a brief overview and points of discussion regarding employment and labor law topics. Should a particular issue arise or should you desire additional consultation to protect your firm, the advice of a competent counsel should be sought.