

## **FAILURE TO MEET COMPANY STANDARDS IS “DISQUALIFYING MISCONDUCT” UNDER NEVADA’S UNEMPLOYMENT STATUTES**

In October 2008, a small electrical contractor in Northern Nevada hired a journeyman electrician to fill one of its two journeyman electrician positions. However, at the time of hire, the journeyman electrician did not hold a “Commercial Journeyman Electrician Certificate” as required by the City of Reno under Section 1402.1 of the Electrical Code.

In Reno, as in many other municipal jurisdictions in Nevada and throughout the United States, journeyman electricians may not engage in the trade of a commercial electrician unless he or she holds a valid “Commercial Journeyman Electrician Certificate.” Additionally, the journeyman electrician must be employed or supervised by a licensed electrical contractor in the State of Nevada. If an electrical contractor sends a journeyman electrician to a job site without ensuring he or she has the required certification, the electrical contractor can be subject to a stop work order, ordered to pay thousands of dollars in penalties and fines, and can be punished by imprisonment in a city jail for up to six months.

Upon his hiring, the journeyman electrician assured the electrical contractor that he would obtain an electrician certificate. To obtain an electrician certificate, three things are required. First, the individual must register to take a test. Next, the individual must take and pass the test with a score of 75% or greater. Finally, the individual must pay a fee.

Over the course of the six months that followed his hiring, the journeyman electrician did not fulfill any of the requirements for obtaining an electrician certificate, despite the electrical contractor’s weekly efforts to remind and encourage him to take the test and obtain the electrician certificate. Moreover, the electrical contractor sent the journeyman a letter advising him that he had roughly 90 days to obtain an electrician certificate. Thereafter, the electrical contractor provided the journeyman with a codebook and paid for a test preparation class provided by the Associated Builders and Contractors.

On June 4, 2009, because the journeyman willfully disregarded a basic and essential job requirement, the electrical contractor terminated the journeyman electrician.

After being terminated, the journeyman electrician filed for unemployment benefits. The State of Nevada Department of Training and Rehabilitation Unemployment Security Division determined that the journeyman was entitled to unemployment benefits. Because the employee claimed he was “working to the best of his ability” to satisfy the Contractor’s policy that all electricians must be certified, the Division determined that he did not commit misconduct that would disqualify him from receiving unemployment benefits.

The electrical contractor appealed the Division's determination to the Appeals Referee asserting that the employee's failure to comply with the company's policy concerning certification of journeyman electricians constitutes misconduct under NRS 612.385. In this regard, the electrical contractor argued that the term "misconduct" under Nevada law includes, ". . . a deliberate violation or disregard on the part of the employee of standards of behavior which his employer has the right to expect." Carelessness or negligence on the part of the employee of such a degree as to show a substantial disregard of the employer's interests or the employee's duties and obligations to his employer are also considered misconduct. Barnum v. Williams, 84 Nev. 37, 41, 436 P.2d 219, 222 (1968). **Disqualifying misconduct occurs when an employee deliberately and unjustifiably violates or disregards an employer's reasonable policy or standard, or otherwise acts in such a careless or negligent manner as to show a substantial disregard of the employer's interests or the employee's duties and obligations to [her] employer.**

The Appeals Referee agreed with the electrical contractor and concluded that the journeyman's **violation of the electrical contractor's company policy requiring all electrical contractors to be certified constituted misconduct for unemployment compensation purposes**. Therefore, the Appeals Referee held that the journeyman was not entitled to unemployment compensation and reversed the determination of the Division.

In this case, common sense and sound legal reasoning won the day. However, this result would not have been achieved if the electrical contractor did not take three important steps:

- The electrical contractor clearly communicated his company policy to his employee. In this regard, the policy was discussed with the employee and codified in writing.
- The electrical contractor gave the employee a reasonable amount of time to comply with the company policy and a clear deadline. When the employee failed to fulfill his responsibility under the policy, he was terminated.
- The electrical contractor documented everything and was able to present the documentation to the Appeals Referee at the appeal hearing.

